

169
No. . . . 2045. .

United States
Circuit Court of Appeals

For the Ninth Circuit.

CRANE CREEK IRRIGATION DISTRICT, a Corporation, and SUNNYSIDE IRRIGATION DISTRICT, a Corporation,

Appellants.

VS.

PORTLAND WOOD PIPE COMPANY, a Corporation, et al.,

Appellees.

Filed

SEP 27 1915

Transcript of Record

F. D. Monckton,
Clerk.

RECEIVE

AUG 27 1915

F. D. MONCKTON,
CLERK

Upon Appeal from the United States District Court for
the District of Idaho, Southern Division.



United States
Circuit Court of Appeals

For the Ninth Circuit.

CRANE CREEK IRRIGATION DISTRICT, a Corporation, and SUNNYSIDE IRRIGATION DISTRICT, a Corporation,

Appellants. r,

vs.

PORTLAND WOOD PIPE COMPANY, a Corporation, et al.,

Appellees.

Transcript of Record

Upon Appeal from the United States District Court for
the District of Idaho, Southern Division.

INDEX

Answer of Crane Creek Irrigation District.....	42
Amendment to Answer of Crane Creek Irrigation District.....	55
Answer of Sunnyside Irrigation District.....	57
Amendment to Answer of Sunnyside Irrigation District.....	70
District.....	219
istrict.....	224
.....	1
st.....	240
.....	244
.....	249
.....	197
.....	227
.....	183
n District.....	231
istrict	235
leas, of Crane	
.....	230
as, of Sunny-	
side Irrigation District	233
Praeipe for Record	237
Return to Record	248
Statement of Evidence on appeal	72

Answer as 876

969

Names and Addresses of the Attorneys of Record.

C. S. VARIAN, Salt Lake City, Utah,

E. R. COULTER, Weiser, Idaho,

*Solicitors for Appellants, Crane Creek
Irrigation District and Sunnyside
Irrigation District.*

RICHARDS & HAGA, Boise, Idaho,

Attorneys for Defendants in Error.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a Corpora-
tion, *Plaintiff,*

vs.

SLICK BROTHERS CONSTRUCTION COM-
PANY, Limited, a corporation, CRANE CREEK
IRRIGATION LAND & POWER COMPANY, a
corporation, CRANE CREEK IRRIGATION
DISTRICT, a corporation, SUNNYSIDE IRRI-
GATION DISTRICT, a corporation, IDAHO NA-
TIONAL BANK, a corporation, C. R. SHAW
WHOLESALE COMPANY, a corporation, MA-
NEY BROTHERS & COMPANY, a co-partner-
ship, UTAH FIRE CLAY COMPANY, a corpora-
tion, PETE MARCH, G. A. HEMAN, J. M.
PINCKARD, F. A. SQUIER, S. C. COMER-
FORD, JIM MIREHOUSE, GUY COMERFORD,
WM. R. COMERFORD, H. H. BEYLEY, JAMES
M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F.
SMITH, CLAUD F. SMITH, HENRY WHIT-
MORE, A. T. SCHWAB, L. F. EASTON, A. L.
CHENOWETH, GEO. C. CATER, J. C. TONEY,
THOMAS SHERRY and E. H. HASBROUCH,
Defendants.

BILL OF COMPLAINT.

*To the Honorable, The Judges of the District Court
of the United States, for the District of Idaho,
Southern Division:*

Portland Wood Pipe Company, a corporation organized and existing under the laws of the State of Oregon, and a citizen of the State of Oregon, brings this its bill of complaint against Slick Brothers Construction Company, Limited, a corporation organized and existing under the laws of the State of Idaho, and a citizen of said State, Crane Creek Irrigation Land & Power Company, a corporation organized and existing under the laws of the State of Idaho, and a citizen of said State, Crane Creek Irrigation District, a corporation organized and existing under the laws of the State of Idaho, and a citizen of said State, Sunnyside Irrigation District, a corporation organized and existing under the laws of the State of Idaho, and a citizen of said State, Idaho National Bank, a corporation organized and existing under the laws of the United States and doing business in the State of Idaho, and a citizen of said State, C. R. Shaw Wholesale Company, a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho under and by virtue of a compliance with the laws of the State of Idaho, and a citizen of said State of Nevada, Maney Brothers & Company, a co-partnership consisting of J. W. Maney and John Maney, each a citizen and resident of the State of Oklahoma, and H. G. Wells and E. J. Wells, each a resident and citizen of the State of Idaho, co-partners under the firm name of Maney Brothers & Company, Utah Fire Clay Company, a corporation organized and existing under the laws of the State of Utah and a citi-

izen of said State, Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Beyley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, L. F. Easton, A. L. Chenoweth, Geo. C. Cater, J. C. Toney, Thomas Sherry and E. H. Hasbrouch, each residents and citizens of the State of Idaho, and G. A. Heman, a resident of St. Louis, Missouri, and a citizen of said State of Missouri; and your orator complains and alleges:

I.

That the said defendant, Slick Brothers Construction Company, Limited, is, and at all the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Boise, Ada County, Idaho, and is a citizen of the State of Idaho.

II.

That the defendant, Crane Creek Irrigation Land & Power Company, is, and at all the times herein-after mentioned was, a corporation organized and existing under the laws of the State of Idaho, with its principal place of business at Weiser, Washington County, Idaho, and is a citizen of the State of Idaho.

III.

That the defendants Crane Creek Irrigation District and Sunnyside Irrigation District are, and at all the times hereinafter mentioned were, corpora-

tions, and each of them is a corporation, organized and existing under the laws of the State of Idaho, and particularly under the provisions of Title 14, Political Code, Revised Codes of Idaho, and the laws supplemental to and amendatory thereof, with their principal place of business at Weiser, Washington County, Idaho, and each of them is a citizen of the State of Idaho.

IV.

That the defendant Idaho National Bank is, and at all the times hereinafter mentioned was, a corporation organized under the laws of the United States, and engaged in general banking business as a National Bank in the City of Boise, Ada County, Idaho, and is a citizen of the State of Idaho.

V.

That the defendant C. R. Shaw Wholesale Company is, and at all the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Nevada, and doing business in the State of Idaho under and by virtue of a compliance with the laws of the State of Idaho, with its principal place of business at Boise, Ada County, Idaho, and is a citizen of the State of Nevada.

VI.

That the defendant Maney Brothers & Company is a co-partnership composed of J. W. Maney and John Maney, each a resident and citizen of the State of Oklahoma, and H. G. Wells and E. J. Wells, each a resident and citizen of the State of Idaho.

VII.

That the defendant Utah Fire Clay Company is, and at all the times hereinafter mentioned was, a corporation organized and existing under the laws of the State of Utah, and is a citizen of the State of Utah.

VIII.

That each of the following named defendants, to-wit: Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Beyley, James M. Magee, C. A. Smith, J. L. Smith, Geo. F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, L. F. Easton, A. L. Chenoweth, Geo. C. Cater, J. C. Toney, Thomas Sherry and E. H. Hasbrouch, is, and at all the times hereinafter mentioned was, a resident and citizen of the State of Idaho.

IX.

That the defendant G. A. Heman is, and at all the times hereinafter mentioned was, a resident of St. Louis, Missouri, and is a citizen of the State of Missouri.

X.

That the matter in controversy in this suit, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00).

Your orator further shows that at all the times hereinafter mentioned the said defendant Crane Creek Irrigation Land & Power Company was, and still is, the owner and reputed owner of, and the said

defendant Crane Creek Irrigation District and Sunnyside Irrigation District own or claim to own some interest or estate in, that certain Irrigation system, works and water rights situated in Washington County, State of Idaho, consisting of:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir as shown by the map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (S. E. $\frac{1}{4}$) of the Southeast Quarter (S. E. $\frac{1}{4}$) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the government of the United States.

(b) All canals, ditches, head gates, flumes, pipe lines, laterals and other structures, dams and works used or intended to be used or required in connection with the distribution of the water from said reservoir and for carrying and distributing said water to the place or places of intended use; and all rights of

way therefor; and particularly that certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section Seven (7), Township Eleven (11) North, Range Three (3) West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30 and into Section 31 of said township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 36 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19 and 18 in Township 10 North, Range 4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in the Northeast Quarter (N. E. $\frac{1}{4}$) of Section 23, Township 10 North, Range 5 West, B. M. Also that certain siphon and branch canal, branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northwesterly direction through Sections 35, 26, 23 and 22, and in a southerly and westerly direction through Sections 27, 28 and 32, Township 11 North, Range 4 West, B. M. And all branch canals, main and subordinate laterals, service ditches, pipe lines, head gates and other structures of every kind and nature, used or intended to be used

in connection with said irrigation system, or any part thereof.

(c) Also all water rights and rights to the use of water in connection with the reservoir and irrigation system, works and structures hereinbefore described, now owned or that may hereafter be acquired for use in connection with said irrigation system, works and structures, and particularly the following permits issued by the State Engineer of the State of Idaho to the said Crane Creek Irrigation Land & Power Company, said permits being issued on the dates, and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, Page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

Permit No. 8507, recorded Book 27, page 8507, issued Aug. 10, 1912.

XII.

That the said defendant Slick Brothers Construction Company, Limited, on or about the 2nd day of April, 1913, entered into a contract in writing with the said defendant Crane Creek Irrigation Land &

Power Company for the construction of the irrigation system, works and structures above described; which contract was thereafter and on or about the 8th day of November, 1913, supplemented and modified by a certain other agreement between said parties relative to the construction of said works. And the said defendant Slick Brothers Construction Company, Limited, pursuant to the terms of said contracts, entered upon the construction of the said works, and while so engaged in such construction and on or about the 9th day of February, 1914, purchased from the said plaintiff, Portland Wood Pipe Company, for use in the construction of said irrigation system, works and structures certain wood stave pipe material to be used in the erection thereof to the amount and at the prices following, to-wit:

Staves for eleven hundred and forty-five (1145) feet of twenty-four (24) inch pipe, with a finished thickness of shell of one and one-half ($1\frac{1}{2}$) inches, in accordance with the specifications, and staves for nine hundred thirty-five (935) feet of twenty-four (24) inch pipe with the same finished thickness of shell.

The necessary metal tongues of No. 12 Gauge, to be used between the butt end joints of staves.

Ninety-one hundred and fifty-six (9156) half inch bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

Ninety-one hundred and fifty-six (9156) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Three Thousand Forty-three and 25-100 Dollars (\$3,043.25).

Also the following material, to-wit:

Staves for eighteen hundred fifty-one (1851) feet of sixty-two (62) inch pipe, with a finished thickness of shell of two and one-eighth ($2\frac{1}{8}$) inches.

The necessary metal tongues of No. 12 Gauge to be used between butt end joints of staves.

Seventy-nine hundred eighty-one (7981) five-eighths ($\frac{5}{8}$) inch bands in two pieces, complete with nuts and washers, bands bent to form and coated prior to shipment.

Fifteen thousand nine hundred sixty-two (15,962) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Nine Thousand One Hundred and Ninety-eight Dollars (\$9,198).

Also the following material, to-wit:

Staves for seven hundred thirty (730) feet of fifty (50) inch pipe, with a finished thickness of shell of two and one-eighth ($2\frac{1}{8}$) inches, and staves for twenty-one hundred seventy (2170) feet of fifty (50) inch pipe with the same finished thickness of shell.

The necessary metal tongues of No. 12 Gauge to be used between the butt end joints of staves.

Eighteen thousand seven hundred eighty-five (18,785) five-eighths ($\frac{5}{8}$) inch bands in one

piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

Eighteen thousand seven hundred eighty-five (18,785) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Fourteen Thousand Two Hundred Nine and 34-100 Dollars (\$14,209.34).

Also the following material, to-wit:

Staves for thirty-three hundred ninety-two (3392) feet of forty-two (42) inch pipe, with a finished thickness of shell of one and five-eighths ($1\frac{5}{8}$) inches, and three hundred fifteen (315) feet of forty-two (42) inch pipe with the same thickness of shell.

The necessary metal tongues of No. 12 Gauge to be used between the butt end joints of staves.

Five thousand eight hundred thirty-three (5833) half ($\frac{1}{2}$) inch bands in one piece; fifty two hundred sixty-five (5265) five-eighths ($\frac{5}{8}$) inch bands in one piece; all complete with nuts and washers, bands bent to form and coated prior to shipment.

Five thousand eight hundred thirty-three (5833) malleable cast iron shoes to be used with one-half ($\frac{1}{2}$) inch bands; five thousand two hundred sixty-five (5265) malleable cast iron shoes to be used with five-eighths ($\frac{5}{8}$) inch bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Seven Thousand Two Hundred Forty-two and 60-100 Dollars (\$7,242.60).

Also the following material, to-wit:

Staves for eight hundred twenty (820) feet of fifty-four (54) inch pipe with a finished thickness of shell of one and seven-eighths ($1\frac{7}{8}$) inches.

The necessary metal tongues of No. 12 Gauge to be used between the butt end joints of staves.

One thousand five hundred eighty-three (1583) five-eighths ($\frac{5}{8}$) inch bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

One thousand five hundred eighty-three (1583) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Two Thousand One Hundred Thirty-three and 30-100 Dollars (\$2,133.30); making in the aggregate as the contract price for such wood stave pipe, hereinbefore described, and the accessories and materials above described the sum of Thirty-five Thousand Eight Hundred Twenty-six and 49-100 Dollars (\$35,826.49).

That at the same time and as part of the same transaction, the said Slick Brothers Construction Company, Limited, also purchased from the plaintiff, Portland Wood Pipe Company, two thousand one hundred seventy-five (2175) feet of twenty (20) inch machine-banded wire-wound wood stave pipe at seventy-two cents (72c) per foot for all designed to be used under a fifty (50) foot head, and eighty-one and one-fourth cents ($81\frac{1}{4}$ c) per foot for such por-

tion of it as was designed to be used under a seventy-five (75) foot head; that the total contract price for such machine-banded wire-bound wood stave pipe, all of which was twenty (20) inches in diameter, delivered f. o. b. Crane Station, Washington County, Idaho, was One Thousand Six Hundred Sixty-seven and 18-100 Dollars (\$1,667.18); making in the aggregate as the contract price for the continuous stave pipe, first hereinbefore mentioned, and for the 2175 feet of twenty inch machine-banded wire-bound wood stave pipe, the sum of Thirty-seven Thousand Four Hundred Ninety-three and 67-100 Dollars (\$37,493.67).

XIII.

That for convenience, written contracts were entered into, bearing date the said 9th day of February, 1914, between plaintiff and the said defendant, Slick Brothers Construction Company, Limited, one of which said contracts covered the material required for the continuous stave pipe, and the other covered the machine-banded wire-bound wood stave pipe. That, in accordance with said contracts and as requested by said defendant, Slick Brothers Construction Company, Limited, from time to time plaintiff shipped and delivered to said Slick Brothers Construction Company, Limited, at Crane Station, Washington County, Idaho, all the material and supplies covered by said contracts, and hereinbefore described, which materials according to the terms of such contracts were to be paid for within thirty (30) days from the date of invoice and shipment, and if

not so paid to bear interest from said date at the rate of eight per cent. (8%) per annum; that such shipments commenced on the 14th day of February and ended on the 18th day of March, 1914, when the last of said material was shipped by plaintiff to said principal contractor and defendant, and delivered to said defendant a few days thereafter at said Crane Station, and was actually used by the said defendant Slick Brothers Construction Company, Limited, in the construction of said irrigation system, works and structures, and is now a part of such irrigation system.

XIV.

That in addition to the materials so furnished by the said plaintiff to the said defendant Slick Brothers Construction Company, Limited, as above set forth, the said plaintiff furnished at the special instance and request of said Slick Brothers Construction Company, Limited, certain other material and supplies for use in the construction of said irrigation system, works and structures, of the reasonable value of One Hundred Thirteen and 05-100 Dollars (\$113.05). That such extra supplies and materials were shipped between the 11th day of March and the 17th day of March, 1914, and were delivered to and received by the said defendant, Slick Brothers Construction Company, Limited, and were used by such defendant in the construction of said irrigation system, works and structures, and are now a part of such irrigation system.

XV.

That the said plaintiff has fully complied with all the terms and conditions of the said contracts above mentioned, by it to be kept and performed.

XVI.

That the said supplies so furnished by the said plaintiff to the said defendant, as above set forth, were of the aggregate value of Thirty-seven Thousand and Six Hundred Six and 72-100 Dollars (\$37,606.-72), no part of which has been paid except the sum of Fifteen Thousand Dollars (\$15,000) paid on or about the 17th day of April, 1914, and the further sum of Seven Thousand Six Hundred Eighty-one and 73-100 Dollars (\$7,681.73), freight charges as such supplies and materials were received, and the sum of Five Thousand Four Hundred Sixteen and 57-100 Dollars (\$5,416.57) paid on or about June 24th, 1914, leaving a balance due and unpaid of *Nine Thousand Seven Hundred Thirty-three and 94-100 Dollars* (\$9,733.94).

XVII.

That on the 9th day of May, 1914, and within sixty (60) days after the delivery of the material and supplies, above mentioned, to the said defendant Slick Brothers Construction Company, Limited, and for the purpose of perfecting a lien upon said irrigation system for the money so due said plaintiff, as above set forth, the said plaintiff filed for record in the office of the Recorder of said County of Washington, State of Idaho, its claim of lien, a copy of which

is hereto attached, marked Exhibit "A" and made a part hereof; to the contents of which exhibit your orator prays that reference may be had the same as if fully and directly set forth herein. Which claim of lien was duly verified, and was on the said 9th day of May, 1914, duly recorded in the records of said County in Book 2 of Liens at pages 83 to 88, inclusive, at thirty minutes past nine o'clock in the forenoon of said day.

XVIII.

That the said plaintiff paid to the said Recorder of Washington County, Idaho, the sum of Six and 60-100 Dollars (\$6.60) for filing and recording the said claim of lien, no part of which has been paid to the plaintiff.

XIX.

That the whole of the lands, right of way, reservoir site, water rights, water appropriations, easements, rights and franchises described in said claim of lien (Exhibit "A") are required for the convenient use of the said irrigation system and must be sold as one parcel.

XX.

Your orator further shows unto this Honorable Court that it has been compelled to, and has employed counsel for the foreclosure of said lien and the collection of the amount due it, as aforesaid, and that for the services of said counsel in foreclosing said lien the sum of Fifteen Hundred Dollars (\$1500) is a reasonable attorney's fee to be allowed herein.

XXI.

That the defendants above named own, or claim to own, or have some interest, right or estate in or to, or some lien on, the said irrigation system, rights of way, water rights and reservoir site above described, and upon which your orator claims a lien, as aforesaid. But the interests, claims or liens of said defendants are, and each of them is, subject, subsequent and subordinate to the said lien of your orator.

XXII.

That numerous liens have been filed against the said irrigation system, lands, rights of way and water rights, hereinbefore described, arising out of the construction of said irrigation system; that the amount of such liens and existing mortgages against the same aggregate, as your orator is informed and believes, upwards of One Hundred Fifty Thousand Dollars (\$150,000), and the said Crane Creek Irrigation Land & Power Company is unable to pay or discharge the same; that in order to properly preserve, protect and maintain said irrigation system, water rights, easements, rights and franchises appurtenant thereto and necessary for the use and operation thereof, and in order to protect your orator and other lien claimants having liens or mortgages on or against said irrigation system, a receiver should be appointed for said irrigation system, property, rights and franchises, with power to preserve and maintain the same pending the foreclosure of your orator's said lien and the sale of said irrigation system, lands, water rights and property hereinbefore described.

XXIII.

Your orator further shows that no proceedings at law have been had or instituted, or any other suit or action commenced, for or on behalf of your orator for the foreclosure of said lien, or the collection of the amount due your orator, as aforesaid.

In Consideration Whereof, and forasmuch as your orator is remediless in the premises according to the strict course of the common law, and can only have relief in a court of equity, your orator prays the aid of this Honorable Court, as follows:

(a) That your orator's said lien may be decreed a first and prior lien upon the irrigation system, property, rights and franchises hereinbefore described, and the whole thereof; and that your orator may have a decree foreclosing its said lien, and judgment against the said defendant Slick Brothers Construction Company, Limited, for the sum of \$9,733.-94, together with interest thereon at the rate of eight per cent. (8%) per annum from the 24th day of June, 1914, and for the sum of \$6.60 paid by your orator for recording its said lien, and for the sum of \$1500.00 attorney's fees, and costs and disbursements herein.

(b) That the usual decree may be made for the sale of said premises, hereinbefore described, according to law and the practice of this honorable court, and that the same may be sold in one parcel and as an entirety or whole and as a going concern and without redemption, to satisfy the amount so found to be due your orator; and that in case of such sale

the said defendants, and each and all of them, and all persons claiming by, through, or under them, or either of them, may be forever barred and foreclosed of and from all equity or redemption, and all claims of, in and to the said irrigation system, lands, rights of way, water rights, rights, and franchises, and every part thereof, and that the purchaser thereof be let into the immediate possession of said premises, rights and franchises so sold, and that in the event the proceeds of such sale be insufficient to satisfy and discharge the amount due your orator, as aforesaid, together with costs of suit and attorney's fees herein, your orator may have judgment for such deficiency against the defendant Slick Brothers Construction Company, Limited, and execution therefor.

(c) That a receiver be appointed for all the property covered by your orator's said lien and hereinbefore described, with full power and authority in said receiver to take immediate possession and control thereof and to preserve, protect, maintain and operate the same under the direction of this Honorable Court, and in such manner as may be deemed necessary from time to time under the circumstances of the case.

(d) That your orator may have such other and further relief in the premises as the nature of the case may require and as shall be proper and agreeable to the principles of equity and to this court.

And may it please your Honors to grant unto your orator a Writ or Writs of Subpoena and other pro-

cess directed to the Marshal of said District, commanding him to summon the defendants hereinbefore named, and each and every of them, to be and appear in this court on a certain day therein named, and under a certain penalty therein to be limited and stated, and then and there, singly and severally, to make full, true and direct answer to this bill of complaint (but not under oath, such answer under oath being expressly waived, as to each of said defendants), and to show cause, if any they have, why the prayer of this bill of complaint should not be granted according to the rules and practices of this Honorable Court, and to stand ready to perform and abide by such order, direction or decree as may be made against them in the premises, and as to your Honorable Court shall seem meet.

And your orator will ever pray, etc.

PORTLAND WOOD PIPE COMPANY,

By: Richards & Haga,

Its Solicitors.

J. H. Richards,

Oliver O. Haga,

McKeen F. Morrow,

Counsel for Plaintiff.

Residence: Boise, Idaho.

United States of America,

District of Idaho,—ss.

Oliver O. Haga, being first duly sworn, upon his oath deposes and says: That he is one of the solicitors for the plaintiff above named, and that nei-

ther the said plaintiff nor any of the officers thereof reside within Ada County, State of Idaho, where this affiant resides, and that this affiant makes this affidavit and verification for and on behalf of the said plaintiff; that he has read the foregoing bill of complaint and knows the contents thereof, and that he believes the facts therein stated to be true.

OLIVER O. HAGA.

Subscribed and sworn to before me this 7th day of November, 1914.

(SEAL)

Edna L. Hice,

Notary Public in and for Ada County, Idaho.

EXHIBIT "A."

PORTLAND WOOD PIPE COM-
PANY, *Claimant,*

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, LIMITED,
CRANE CREEK IRRIGATION
LAND & POWER COMPANY,
CRANE CREEK IRRIGATION
DISTRICT and SUNNYSIDE
IRRIGATION DISTRICT.

*Notice of Intention to Hold and Claim Lien.
To Whom It May Concern:*

Notice Is Hereby Given that the claimant, Portland Wood Pipe Company, a corporation organized under the laws of the State of Oregon with its principal place of business at Portland, Oregon,

claims a lien on all the property hereinafter described and on all the interests therein and thereto of the said Slick Brothers Construction Company, Limited, Crane Creek Irrigation Land & Power Company, Crane Creek Irrigation District and Sunnyside Irrigation District.

And the said claimant, Portland Wood Pipe Company, holds and claims a lien, and hereby gives notice of its intention to hold and claim a lien, for materials furnished at the special instance and request of Slick Brothers Construction Company, Limited, the principal contractor, and used by such principal contractor in the construction of the works hereinafter described.

That the owner and reputed owner of said works is the Crane Creek Irrigation Land & Power Company, a corporation organized under the laws of the State of Idaho, with its principal place of business at Weiser, Idaho. That the said Crane Creek Irrigation District and the said Sunnyside Irrigation District are corporations, and each of them is a corporation, organized under the irrigation district laws of the State of Idaho, with their principal place of business in Washington County, said State, and own or claim to own some interest or estate in the irrigation system, works and water rights, hereinafter described, by virtue of a contract or contracts with the said Crane Creek Irrigation Land & Power Company, the terms and conditions of which are to this claimant unknown.

That the said Slick Brothers Construction Company, Limited, a corporation organized under the laws of the State of Idaho, with its principal place of business at Boise, Idaho, on or about the 2nd day of April, 1913, entered into a contract with the said Crane Creek Irrigation Land & Power Company for the construction of the irrigation system, works and structures hereinafter described, which contract was thereafter and on or about the 8th day of November, 1913, supplemented and modified by a certain other agreement between said parties relative to the construction of said works. And the said Slick Brothers Construction Company, Limited, while engaged in the construction of said irrigation system, works and structures, and on or about the 9th day of February, 1914, purchased from this claimant, Portland Wood Pipe Company, for use in the construction of said irrigation system, works and structures certain wood stave pipe and material to be used in the erection thereof, to the amount and at the prices following, to-wit:

Staves for eleven hundred and forty-five (1145) feet of twenty-four (24) inch pipe, with a finished thickness of shell of one and one-half ($1\frac{1}{2}$) inches, in accordance with the specifications, and staves for nine hundred thirty-five (935) feet of twenty-four (24) inch pipe with the same finished thickness of shell.

The necessary metal tongues of No. 12 Gauge, to be used between the butt end joints of staves.

Ninety-one hundred and fifty-six (9156) half

inch ($\frac{1}{2}$) bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

Ninety-one hundred fifty-six (9156) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Three Thousand Forty-three and 25-100 Dollars (\$3,043.25).

Also the following material, to-wit:

Staves for eighteen hundred fifty-one (1851) feet of sixty-two (62) inch pipe, with a finished thickness of shell of two and one-eighth ($2\frac{1}{8}$) inches.

The necessary metal tongues of No. 12 Gauge, to be used between butt end joints of staves.

Seventy-nine hundred eighty-one (7981) five-eighths ($\frac{5}{8}$) inch bands in two pieces, complete with nuts and washers, bands bent to form and coated prior to shipment.

Fifteen thousand nine hundred sixty-two (15,962) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Nine Thousand One Hundred and Ninety-eight Dollars (\$9,198).

Also the following material, to-wit:

Staves for seven hundred thirty (730) feet of fifty (50) inch pipe, with a finished thickness of shell of two and one-eighth ($2\frac{1}{8}$) inches, and staves for twenty-one hundred seventy (2170)

feet of fifty (50) inch pipe with the same finished thickness of shell.

The necessary metal tongues of No. 12 Gauge to be used between the butt end joints of staves.

Eighteen thousand seven hundred eighty-five (18,785) five-eighths ($\frac{5}{8}$) inch bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

Eighteen thousand seven hundred eighty-five (18,785) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Fourteen Thousand Two Hundred Nine and 34-100 Dollars (\$14,209.34).

Also the following material, to-wit:

Staves for thirty-three hundred ninety-two (3392) feet of forty-two (42) inch pipe, with a finished thickness of shell of one and five-eighths ($1\frac{5}{8}$) inches, and three hundred fifteen (315) feet of forty-two (42) inch pipe with the same thickness of shell.

The necessary metal tongues of No. 12 Gauge to be used between the butt end joints of staves.

Five thousand eight hundred thirty-three (5833) half ($\frac{1}{2}$) inch bands in one piece; fifty-two hundred sixty-five (5265) five-eighths ($\frac{5}{8}$) inch bands in one piece; all complete with nuts and washers, bands bent to form and coated prior to shipment.

Five thousand eight hundred thirty-three (5833) malleable cast iron shoes to be used with

one-half ($\frac{1}{2}$) inch bands; five thousand two hundred sixty-five (5265) malleable cast iron shoes to be used with five-eighths ($\frac{5}{8}$) inch bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Seven Thousand Two Hundred Forty-two and 60-100 Dollars (\$7,242.60).

Also the following material, to-wit:

Staves for eight hundred twenty (820) feet of fifty-four (54) inch pipe with a finished thickness of shell of one and seven-eighths ($1\frac{7}{8}$) inches.

The necessary metal tongues of No. 12 Gauge to be used between the butt end joints of staves.

One thousand five hundred eighty-three (1,583) five-eighths ($\frac{5}{8}$) inch bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

One thousand five hundred eighty-three (1,583) malleable cast iron shoes to be used with said bands.

All to be delivered f. o. b. cars, Crane Station, Idaho, for the sum of Two Thousand One Hundred Thirty-three and 30-100 Dollars (\$2,133.30); making in the aggregate as the contract price for such wood stave pipe, hereinbefore described, and the accessories and materials above described the sum of Thirty-five Thousand Eight Hundred Twenty-six and 49-100 Dollars (\$35,826.49).

That at the same time and as part of the same transaction, the said Slick Brothers Construction

Company, Limited, also purchased from this claimant, Portland Wood Pipe Company, two thousand one hundred and seventy-five (2175) feet of twenty (20) inch machine-banded wire-wound wood stave pipe at seventy-two cents (72c) per foot for all designed to be used under a fifty (50) foot head, and eighty-one and one-fourth cents ($81\frac{1}{4}$ c) per foot for such portion of it as was designed to be used under a seventy-five (75) foot head; that the total contract price for such machine-banded wire-wound wood stave pipe, all of which was twenty (20) inches in diameter, delivered f. o. b. Crane Station, Washington County, Idaho, was One Thousand Six Hundred Sixty-seven and 18-100 Dollars (\$1,667.18); making in the aggregate as the contract price for the continuous stave pipe, first hereinbefore mentioned, and for the 2175 feet of twenty inch machine-banded wire-wound wood stave pipe the sum of Thirty-seven Thousand Four Hundred and Ninety-three and 67-100 Dollars (\$37,493.67).

That for convenience, written contracts were entered into, bearing date the said 9th day of February, 1914, between this claimant and the said Slick Brothers Construction Company, Limited, one of which said contracts covered the material required for the continuous stave pipe, and the other covered the machine-banded wire-wound wood stave pipe.

That in accordance with said contracts and as requested by said Slick Brothers Construction Company, Limited, from time to time this claimant shipped and delivered to said Slick Brothers Construc-

tion Company, Limited, at Crane Station, Washington County, Idaho, all the material and supplies covered by said contracts, and hereinbefore described; that such shipments commenced on the 14th day of February and ended on the 18th day of March, 1914, when the last of said material was shipped by this claimant to said principal contractor, and delivered to said contractor a few days thereafter at said Crane Station.

That in addition thereto this claimant furnished at the special instance and request of said principal contractor, certain other material and supplies for use in the construction of said irrigation system, works and structures, of the reasonable value of One Hundred Thirteen and 05-100 Dollars (\$113.05). That such extra supplies and material were shipped between the 11th day of March and the 17th day of March, 1914, for delivery to said principal contractor at said Crane Station, Idaho; and that all of such material, hereinbefore described or referred to, and furnished by this claimant, and for which a lien is hereby claimed on said irrigation system, works and structures, water rights and appurtenances, was received by said Slick Brothers Construction Company, Limited, and by such Company used in the construction of said irrigation system, works and structures, and is now a part of such irrigation system.

That this claimant has fully complied with all the terms of the said contract or contracts by it to be kept and performed.

That by the said contracts for the purchase of said material it was agreed that the said Slick Brothers Construction Company, Limited, should pay for said material within thirty (30) days from the date of invoice and shipment, and should pay the freight thereon, but the amount of freight charges should be credited on the purchase price upon presentation of the original receipted expense bills for such charges. That the said principal contractor paid this claimant on or about the 17th day of April, 1914, the sum of Fifteen Thousand Dollars (\$15,000) in cash to be applied on its account for the purchase of such material; and it has paid freight charges on such material to the amount of Seven Thousand Three Hundred Eighty-three and 22-100 Dollars (\$7,383.22), for which said principal contractor is entitled to credit on the purchase price. That the total credit to which said principal contractor is entitled by reason of the payments made as aforesaid is Twenty-two Thousand Three Hundred Eighty-three and 22-100 Dollars (\$22,383.22), leaving a balance due this claimant, Portland Wood Pipe Company, on account of the furnishing of such materials and supplies of Fifteen Thousand Two Hundred Twenty-three and 50-100 Dollars (\$15,223.50).

That all of such material was sold upon terms that provided that if payments were not made within thirty (30) days from date of invoice, the same should bear interest at the rate of eight per cent. (8%) per annum. And this claimant therefore claims interest upon the amount due it, as aforesaid,

to-wit: On the sum of \$15,223.50, from the 17th day of April, 1914, at eight per cent. (8%) per annum.

That the property, irrigation system, rights of way, water rights, works and structures upon which this claimant hereby claims a lien for the amount due it, with interest thereon as aforesaid, are more particularly described as follows:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir, as shown by the map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (S. E. $\frac{1}{4}$) of the Southeast Quarter (S. E. $\frac{1}{4}$) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the government of the United States.

(b) All canals, ditches, head gates, flumes, pipe lines, laterals and other structures, dams and works, used or intended to be used or required in connection

with the distribution of the water from said reservoir and for carrying and distributing said water to the place or places of intended use; and all rights of way therefor; and particularly that certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section Seven (7), Township Eleven (11) North, Range Three (3) West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30 and into Section 31 of said township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 36 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19 and 18 in Township 10 North, Range 4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in the Northeast Quarter (N. E. $\frac{1}{4}$) of Section 23, Township 10 North, Range 5 West, B. M. Also that certain siphon and branch canal, branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northwesterly direction through Sections 35, 26, 23, and 22, and in a southerly and westerly direction through Sections 27, 28 and 32, Township 11 North, Range 4 West, B. M. And all branch canals, main and subordinate laterals, serv-

ice ditches, pipe lines, head gates and other structures of every kind and nature, used or intended to be used in connection with said irrigation system, or any part thereof, which said irrigation system is designed to furnish water for irrigating certain large tracts of land situated within what is known as the Sunnyside Irrigation District and the Crane Creek Irrigation District, which districts have acquired, or intended to acquire by virtue of contracts with the said Crane Creek Irrigation Land & Power Company, certain rights or interests in said irrigation system, the nature and terms of which are to this claimant unknown, but said irrigation system being constructed in part at least for the irrigation of land within said irrigation districts.

(c) Also all water rights and rights to the use of water in connection with the reservoir and irrigation system, works and structures hereinbefore described, now owned or that may hereafter be acquired for use in connection with said irrigation system, works and structures, and particularly the following permits issued by the State Engineer of the State of Idaho to the said Crane Creek Irrigation Land & Power Company, said permits being issued on the dates, and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

Permit No. 8507, recorded Book 27, page 8507, issued Aug. 10, 1912.

It being the intention of this claimant, Portland Wood Pipe Company, to claim a lien for the sum of \$15,223.50, with interest thereon at the rate of eight per cent. (8%) per annum from the 17th day of April, 1914, upon all of said irrigation system, works and structures, water rights and rights of way therefor, whether owned by the said Crane Creek Irrigation Land & Power Company, or the said Sunnyside Irrigation District or the said Crane Creek Irrigation District, for material furnished for use in the construction of said irrigation system, as hereinbefore stated, and upon all the rights and franchises owned or held in connection with said irrigation system, water rights and rights of way.

Wherefore, the Portland Wood Pipe Company, claimant, hereby claims a lien, and hereby gives notice that it holds and claims a lien upon all of the property above described, and upon all of the appurtenances, rights and franchises thereunto appertaining, and upon the whole thereof, for the sum of \$15,223.50, together with interest thereon at the rate of eight per cent. (8%) per annum from the 17th day of April, 1914, under and by virtue of the

provisions of the statutes of Idaho relating to liens and the preferred claims of mechanics and others, in such cases made and provided.

Dated this 8th day of May, 1914.

PORTLAND WOOD PIPE COMPANY,

By Oliver O. Haga,
Its Attorney and Agent.

State of Idaho,
County of Ada,—ss.

Oliver O. Haga, being first duly sworn, upon his oath deposes and says: That the Portland Wood Pipe Company, claimant in the foregoing notice of lien, is a corporation with its principal place of business at Portland, Oregon, and that such Company and each and all of its officers are absent from the State of Idaho; that this affiant is one of the attorneys and agent for the said Portland Wood Pipe Company for the purpose of filing this lien and collecting the amount due said Company, as aforesaid; that he has read the above and foregoing claim of lien and knows the contents thereof, and that he believes the same to be true and just;

That his information concerning said account and the furnishing of said materials has been obtained from an examination of the original contracts between the Portland Wood Pipe Company and Slick Brothers Construction Company, Limited, for the furnishing of said materials, and from an examination of the original contracts between Slick Broth-

ers Construction Company, Limited, and the said Crane Creek Irrigation Land & Power Company for the construction of said irrigation works, and from conferences with the officers of said Slick Brothers Construction Company, Limited, and the said Crane Creek Irrigation Land & Power Company and the said Portland Wood Pipe Company; that he verily believes that the statements made in said notice and claim of lien, and the facts therein set forth, and the claims therein made by the Portland Wood Pipe Company are true and just.

OLIVER O. HAGA.

Subscribed and sworn to before me this 8th day of May of May, A. D. 1914.

(SEAL)

Edna L. Hice,
Notary Public.

Endorsed:

Filed Nov. 7, 1914.

A. L. Richardson, *Clerk.*

By E. B. Yarrington, *Deputy.*

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
tion,

Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION

DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, H. H. BEGLEY, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUD F. SMITH, HENRY WHITMORE, A. T. SCHWAB, L. F. EASTON, A. L. CHENOWETH, GEO. C. CATER, J. C. TONEY, THOMAS SHERRY, and E. H. HASBROUCH,

Defendants.

The answer of the Crane Creek Irrigation District, a corporation, one of the defendants above named, to the bill of complaint exhibited by the above-named complainant.

I.

Defendant admits that the Portland Wood Pipe Company, complainant, is a corporation organized and existing under the laws of the State of Oregon and a citizen thereof.

II.

Admits that this defendant is a corporation organized and existing under the laws of the State of Idaho and a citizen of said State as hereinafter averred.

III.

Admits that the Crane Creek Irrigation Land and Power Company is a corporation organized and existing under the laws of the State of Idaho and a citizen of said State.

IV.

Admits that the Sunnyside Irrigation District is a corporation organized and existing under the laws of the State of Idaho and a citizen thereof.

V.

Admits that The Idaho National Bank is a corporation organized and existing under the laws of the United States and doing business in the State of Idaho and a citizen thereof.

VI.

Admits that the C. R. Shaw Wholesale Company is a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho by virtue of a compliance with the laws thereof, and a citizen of the State of Nevada.

VII.

Admits that Maney Brothers and Company is a co-partnership consisting of J. W. Maney and John Maney, and that each is a citizen and resident of the State of Oklahoma, and of H. G. Wells and E. J. Wells, and that each is a resident and citizen of the State of Idaho, and that the said co-partnership is doing business under the firm name of Maney Brothers and Company.

VII½.

Admits that the Utah Fire Clay Company is a corporation organized and existing under the laws of the State of Utah and is a citizen thereof.

VIII.

Admits that Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Beyley, James M. Magee, C. A. Smith, J. L. Smith, George F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, A. L. Chenoweth, George C. Cater, J. C. Toney, Thomas Sherry, and E. H. Hasbrouch, are each a citizen of the State of Idaho; and that L. F. Easton is a citizen and resident of the State of Wisconsin; and that G. A. Heman is a resident and citizen of the State of Missouri.

IX.

Admits that the defendants Crane Creek Irrigation District and Sunnyside Irrigation District are, and at all the times in said bill of complaint mentioned were, and now are, corporations, and that each of them was organized and is existing under the laws of the State of Idaho, and particularly under the provisions of Title XIV., Political Code, Revised Codes of Idaho, and the laws supplemental to and amendatory thereof, and that their principal places of business are at Weiser, in Washington County, Idaho, and that each of them is a citizen of said State.

X.

Admits that the matter in controversy in this suit,

exclusive of interest and costs, exceeds the sum of Three Thousand (\$3000.00) Dollars.

XI.

Admits that this defendant and the defendant Sunnyside Irrigation District are the owners of:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir as shown by the map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (S. E. $\frac{1}{4}$) of the Southeast Quarter (S. E. $\frac{1}{4}$) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, head gates, flumes, pipe lines, laterals and other structures, dams and works, used or intended to be used or required in connection with the distribution of the water from said reservoir and for carrying and distributing said water to the place or places of intended use; and all rights of

way therefor; and particularly that certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section Seven (7), Township Eleven (11) North, Range Three (3) West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30 and into Section 31 of said township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 36 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19 and 18 in Township 10 North, Range 4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in the Northeast Quarter (N. E. $\frac{1}{4}$) of Section 23, Township 10 North, Range 5 West, B. M. Also that certain siphon and branch canal, branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northwesterly direction through Sections 35, 26, 23, and 22, and in a southerly and westerly direction through Sections 27, 28, and 32, Township 11 North, Range 4 West, B. M. And all branch canals, main and subordinate laterals, service ditches, pipe lines, head gates and other structures of every kind and nature, used or intended to be used

in connection with said irrigation system, or any part thereof.

(c) And also, in connection with Sunnyside Irrigation District, all water rights and rights to the use of water in connection with the reservoir and irrigation system, works and structures hereinbefore described, now owned or that may hereafter be acquired for use in connection with said irrigation system, works and structures, and particularly the following permits issued by the State Engineer of the State of Idaho to the said Crane Creek Irrigation Land & Power Company, said permits being issued on the dates, and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

And defendant denies that Permit No. 8507 as recorded in Book 27, page 8507 and issued August 10, 1912, was acquired for, or used in connection with the said irrigation system and reservoir system, works or structures.

XII.

Defendant denies that at all the times in said bill of complaint mentioned the defendant Crane Creek Irrigation Land and Power Company was the owner or reputed owner, of the irrigation system, works and water rights situate in Washington County, Idaho, in said bill of complaint and hereinbefore in this answer mentioned and described, and denies that the said Crane Creek Irrigation Land and Power Company at the time of the filing of complainant's alleged lien, to-wit: on the 9th day of May, A. D. 1914, or at any time since, or now, the Crane Creek Irrigation Land and Power Company was the owner or reputed owner of said system, works, or water rights, or any part thereof, excepting only thirty and four-tenths (30.4) per centum of the said system, works and water rights lying outside of the boundaries of this defendant and of the Sunnyside Irrigation District.

XIII.

Defendant admits that the defendant Slick Brothers Construction Company, Limited, on or about the second day of April, 1913, entered into a contract in writing with the said defendant Crane Creek Irrigation Land and Power Company for the construction of the irrigation system, works, and structures in the bill of complaint and hereinbefore described, and that said contract was on or about the 8th day of November, 1913, supplemented and modified by a certain other agreement between the said parties relative to the construction of said works; that the said construction Company, pursuant to said con-

tracts, entered upon the construction of the said works and while so engaged in such construction and on or about the 9th day of February, 1914, it purchased from the complainant, Portland Wood Pipe Company, for use in the construction of said irrigation system, works and structures certain wood stave pipe material to be used in the erection thereof in the quantity and at the prices specifically set forth in the complainant's bill of complaint; and admits that at the same time and as a part of the same transaction the said construction Company purchased from the said complainant in quantity and at the prices in said bill of complaint specified certain twenty-inch machine-banded wire-wound wood stave pipe; and that all of said material was of the value or contract price in the aggregate of Thirty-seven Thousand Four Hundred Ninety-three and Sixty-seven One-hundredths (\$37,493.67) Dollars.

XIV.

Defendant admits the allegations of the paragraph XIII. of said bill of complaint, that written contracts of said date the 9th day of February, 1914, covering the material and prices aforesaid, were entered into by the said construction Company and the said complainant, and that all of said material was delivered to the said construction Company and was used by said Company in the construction of said irrigation system and structures.

XV.

Defendant admits that the said complainant also

furnished to the said construction Company other material and supplies for use in the construction of said irrigation system, works and structures of the reasonable value of One Hundred Thirteen and Five One-hundredths (\$113.05) Dollars, which were delivered to the construction Company between the 11th and 17th days of March, A. D. 1914, and were used in the construction of said system and works.

XVI.

As to the allegations of paragraph XV. of said bill of complaint that the complainant has fully complied with all the terms and conditions of the said contracts in the said bill of complaint mentioned, by it to be kept and performed, this defendant has no knowledge and is unable to admit or deny the same.

XVII.

Admits that there is a balance due and unpaid the complainant of Nine Thousand Five Hundred Eight and Forty-two One-hundredths (\$9,508.42) Dollars.

XVIII.

This defendant admits that on the 9th day of May, A. D. 1914, and within sixty days after the delivery of the material and supplies, hereinbefore admitted, to the Slick Brothers Construction Company, Limited, the complainant filed for record in the office of the County Recorder of Washington County, Idaho, a pretended claim of lien, and a copy thereof is attached to the bill of complaint marked "Exhibit A;" that said pretended claim of lien was verified and was recorded on said day in the records of said Coun-

ty in Book 2 of liens at page 83 to page 88 inclusive, at thirty minutes past nine o'clock in the forenoon of said day; and that complainant paid the recorder of said County the sum of Six and Sixty One-hundredths (\$6.60) Dollars for filing and recording the same.

XIX.

Admits that the whole of the lands, right of way, reservoir site, water rights, water appropriations, easements, rights and franchises described in said pretended claim of lien are required for the convenient use of the said irrigation system; but defendant denies that the same must be sold as one parcel or at all.

XX.

Defendant denies that the complainant has been compelled to employ counsel for the foreclosure of said pretended lien or for the collection of the amount due as aforesaid, and denies that Fifteen Hundred (\$1500.00) Dollars or any other sum of money is a necessary or reasonable attorneys' fees for the foreclosing of said pretended lien, or that complainant is entitled to any counsel fee whatever for the collection by suit or otherwise of the said sums herein admitted to be due.

XXI.

Defendant admits that it owns and claims to own and has an interest, right and estate in and to the irrigation system, right of way, water rights, and

reservoir site in said bill of complaint and hereinbefore in this answer described; and defendant denies that its interest is in anywise subject, subsequent, or subordinate to the said pretended claim of lien of the complainant.

XXII.

This defendant admits that some pretended claims of lien have been filed against its irrigation system, lands, and rights of way, and water rights alleged to have arisen out of the construction of the said system, but as to the amounts thereof the defendant has no knowledge sufficient to enable it to deny or admit the same; and this defendant upon its information and belief denies that the said Crane Creek Irrigation Land and Power Company is unable to pay or discharge its indebtedness as represented by said pretended claims of lien, and denies that in order to properly preserve, protect or maintain said system, water rights, easements, rights and franchises appurtenant thereto and necessary to the use and operation thereof, or to protect the said claimant or other pretended lien claimants, a receiver should be appointed for said system, property, rights and franchises, and denies that the said irrigation system, property, rights and franchises can be administered by a receiver.

XXIII.

Further answering the said bill of complaint this defendant alleges:

That it is and during all the times hereinbefore and hereinafter mentioned was a public corporation organized and existing as an irrigation district under and by virtue of the laws of the State of Idaho and particularly under the provisions of Title XIV. Political Code, Revised Codes of Idaho and the laws supplemental and amendatory thereof, for the purposes of supplying that portion of the public owning, occupying, using, or cultivating lands within its boundaries with water from the public streams and public unappropriated waters for household, domestic, and irrigating purposes and the cultivation of lands, and that its irrigation system, works, reservoir sites and water rights, as described in the bill of complaint herein and in this answer, during all of the times in said bill of complaint and this answer mentioned here and now are dedicated to a public use as aforesaid; that this defendant has hereinbefore issued its bonds in the par value of Two Hundred Forty-six Thousand Nine Hundred (\$246,900.-00) Dollars, in the aggregate, which said bonds have been sold and distributed to numbers of individuals and corporations in different states, and which said bonds are by force of the laws of Idaho charged as a first lien upon this defendant's irrigation system, works, water rights, and reservoir sites; that on the 31st day of August, A. D. 1911, the board of directors of this defendant filed its petition in the District Court in and for the County of Washington of the State of Idaho, for a confirmation of the proceedings by which defendant was organized as an irrigation

district and thereafter such proceedings were had; that a judgment of said Court was entered as follows, to-wit: "that all acts and things done and performed by the board of County Commissioners in the organization of said District, and all acts and things done and performed by said District and its board of directors from the filing of the petition for the organization of said District up to the date of the filing of the petition for confirmation thereof, were and are legal and valid and are by the Court approved and confirmed;" and thereupon an appeal was taken from said judgment of confirmation to the Supreme Court of the State of Idaho, which Court on the second day of January, A. D. 1912, entered its judgment affirming the judgment of the court below.

And this defendant, Crane Creek Irrigation District, alleges that no lien for material or otherwise furnished to the Slick Brothers Construction Company, Limited, by the complainant herein, is given by the laws of the State of Idaho, and that the pretended claim of lien set up and asserted by the complainant in its bill of complaint herein is without authority of law and of no force and effect.

Wherefore, having fully answered this defendant prays that the pretended claim of lien asserted by the complainant herein against the property of this defendant be denied; that complainant take nothing by its said bill against this defendant or its property; and that this bill be dismissed as against this defendant; and that defendant have and recover its

reasonable costs and charges in this behalf wrongfully incurred.

CRANE CREEK IRRIGATION DISTRICT.

By Chas. C. Cleary,
President.

Ed. R. Coulter, Weiser,
C. S. Varian, Salt Lake City, Utah,
Solicitors for
Crane Creek Irrigation District.

Service with copy admitted this 3rd day of February, A. D. 1915.

Richards & Haga,
Solicitors for Complainant.

*In the District Court of the United States, District
of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY,

Plaintiff,

VS.

SLICK BROTHERS CONSTRUCTION COM-
PANY, Ltd., a corporation, et al.,

Defendants.

In Equity No. 511.

*Amendment to Answer of Crane Creek Irrigation
District to Bill of Complaint.*

The defendant Crane Creek Irrigation District by leave of Court first had and obtained, makes the following amendment to its answer to the Bill of Complaint by striking from the first two lines of paragraph 11 of said answer, the following:

“Admits that this defendant and the defendant Crane Creek Irrigation District are the owners of” and inserting in lieu thereof:

“This defendant denies that the Crane Creek Irrigation Land and Power Company during all or any of the times mentioned in said bill, was or still is the owner or reputed owner of the lands, irrigation system, works or water rights described in paragraph 11 of said Bill of Complaint, but, on the contrary, this defendant alleges that said Crane Creek Irrigation Land and Power Company, this defendant and defendant Crane Creek Irrigation District during all of said times were and still are the owners of”.

CRANE CREEK IRRIGATION DISTRICT,

(Corporate Seal) By Daisy Dash,
Secretary.

ED R. COULTER,

C. S. VARIAN,

Solicitors for Crane Creek Irrigation District.

Endorsed: Filed Feb. 3, 1915. A. L. Richardson,
Clerk. By Pearl E. Zanger, Deputy.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK

IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, H. H. BEGLEY, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUD F. SMITH, HENRY WHITMORE, A. T. SCHWAB, L. F. EASTON, A. L. CHENOWETH, GEO. C. CATER, J. C. TONEY, THOMAS SHERRY, and E. H. HASBROUCH,

Defendants.

The answer of the Sunnyside Irrigation District, a corporation, one of the defendants above named, to the bill of complaint exhibited by the above-named complainant.

I.

Defendant admits that the Portland Wood Pipe Company, complainant, is a corporation organized and existing under the laws of the State of Oregon and a citizen thereof.

II.

Admits that this defendant is a corporation organized and existing under the laws of the State of Idaho and a citizen of said State as hereinafter averred.

III.

Admits that the Crane Creek Irrigation Land and Power Company is a corporation organized and existing under the laws of the State of Idaho and a citizen of said State.

IV.

Admits that the Sunnyside Irrigation District is a corporation organized and existing under the laws of the State of Idaho and a citizen thereof.

V.

Admits that The Idaho National Bank is a corporation organized and existing under the laws of the United States and doing business in the State of Idaho and a citizen thereof.

VI.

Admits that the C. R. Shaw Wholesale Company is a corporation organized and existing under the laws of the State of Nevada and doing business in the State of Idaho by virtue of a compliance with the laws thereof, and a citizen of the State of Nevada.

VII.

Admits that Maney Brothers and Company is a co-partnership consisting of J. W. Maney and John Maney, and that each is a citizen and resident of the State of Oklahoma, and of H. G. Wells and E. J. Wells, and that each is a resident and citizen of the State of Idaho, and that the said co-partnership is doing business under the firm name of Maney Brothers and Company.

VII¹/₂.

Admits that the Utah Fire Clay Company is a corporation organized and existing under the laws of the State of Utah and is a citizen thereof.

VIII.

Admits that Pete March, J. M. Pinckard, F. A. Squier, S. C. Comerford, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, H. H. Beyley, James M. Magee, C. A. Smith, J. L. Smith, George F. Smith, Claud F. Smith, Henry Whitmore, A. T. Schwab, A. L. Chenoweth, George C. Cater, J. C. Toney, Thomas Sherry, and E. H. Hasbrouch, are each a citizen of the State of Idaho; and that L. F. Easton is a citizen and resident of the State of Wisconsin; and that G. A. Heman is a resident and citizen of the State of Missouri.

IX.

Admits that the defendants Crane Creek Irrigation District and Sunnyside Irrigation District are, and at all the times in said bill of complaint mentioned were, and now are, corporations, and that each of them was organized and is existing under the laws of the State of Idaho, and particularly under the provisions of Title XIV., Political Code, Revised Codes of Idaho, and the laws supplemental to and amendatory thereof, and that their principal places of business are at Weiser, in Washington County, Idaho, and that each of them is a citizen of said State.

X.

Admits that the matter in controversy in this suit,

exclusive of interest and costs, exceeds the sum of Three Thousand (\$3000.00) Dollars.

XI.

Admits that this defendant and the defendant, Crane Creek Irrigation District, are the owners of:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office, Boise, Idaho, by one E. D. Ford on the 3rd day of September, 1907, which said application was approved by Thos. Ryan, Acting Secretary of the Interior, on the 26th day of October, 1907; which said reservoir as shown by the map (a duplicate of which is on file in the said United States Land Office at Boise, Idaho), will have a storage capacity of approximately seventy thousand six hundred seventeen (70,617) acre feet, with a dam fifty-nine (59) feet high; and the dam for which said reservoir is situated in the Southeast Quarter (S. E. $\frac{1}{4}$) of the Southeast Quarter (S. E. $\frac{1}{4}$) of Section Nineteen (19) of said township and range; and all lands situated within said reservoir site, including the right of way secured, as aforesaid, from the Government of the United States.

(b) All canals, ditches, head gates, flumes, pipe lines, laterals and other structures, dams and works, used or intended to be used or required in connection with the distribution of the water from said reservoir and for carrying and distributing said water to

the place or places of intended use; and all rights of way therefor; and particularly that certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section Seven (7), Township Eleven (11) North, Range Three (3) West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30 and into Section 31 of said township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 36 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19 and 18 in Township 10 North, Range 4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in the Northeast Quarter (N. E. $\frac{1}{4}$) of Section 23, Township 10 North, Range 5 West, B. M. Also that certain siphon and branch canal, branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northwesterly direction through Sections 35, 26, 23, and 22, and in a southerly and westerly direction through Sections 27, 28, and 32, Township 11 North, Range 4 West, B. M. And all branch canals, main and subordinate laterals, service ditches, pipe lines, head gates and other struc-

tures of every kind and nature, used or intended to be used in connection with said irrigation system, or any part thereof.

(c) And, also, in connection with Crane Creek Irrigation District, all water rights and rights to the use of water in connection with the reservoir and irrigation system, works and structures hereinbefore described, now owned or that may hereafter be acquired for use in connection with said irrigation system, works and structures, and particularly the following permits issued by the State Engineer of the State of Idaho to the said Crane Creek Irrigation Land & Power Company, said permits being issued on the dates, and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

And defendant denies that Permit No. 8507 as recorded in Book 27, page 8507 and issued August 10, 1912, was acquired for, or used in connection with the said irrigation system and reservoir system, works or structures.

XII.

Defendant denies that at all the times in said bill of complaint mentioned the defendant Crane Creek Irrigation Land and Power Company was the owner, or reputed owner, of the irrigation system, works and water rights situate in Washington County, Idaho, in said bill of complaint and hereinbefore in this answer mentioned and described, and denies that the said Crane Creek Irrigation Land and Power Company at the time of the filing of complainant's alleged lien, to-wit, on the 9th day of May, A. D. 1914, or at any time since, or now, the Crane Creek Irrigation Land and Power Company was the owner or reputed owner of said system, works, or water rights, or any part thereof, excepting only thirty and four tenths (30.4) per centum of the said system, works and water rights lying outside of the boundaries of this defendant and of the Sunnyside Irrigation District.

XIII.

Defendant admits that the defendant Slick Brothers Construction Company, Limited, on or about the second day of April, 1913, entered into a contract in writing with the said defendant Crane Creek Irrigation Land and Power Company for the construction of the irrigation system, works, and structures in the bill of complaint and hereinbefore described, and that said contract was on or about the 8th day of November, 1913, supplemented and modified by a certain other agreement between the said parties

relative to the construction of said works; that the said construction Company, pursuant to said contracts entered upon the construction of the said works and while so engaged in such construction and on or about the 9th day of February, 1914, it purchased from the complainant, Portland Wood Pipe Company, for use in the construction of said irrigation system, works and structures certain wood stave pipe material to be used in the erection thereof in the quantity and at the prices specifically set forth in the complainant's bill of complaint; and admits that at the same time and as a part of the same transaction the said construction Company purchased from the said complainant in quantity and at the prices in said bill of complaint specified certain twenty-inch machine-banded wire-wound wood stave pipe; and that all of said material was of the value or contract price in the aggregate of Thirty-seven Thousand Four Hundred Ninety-three and Sixty-seven One-hundredths (\$37,493.67) Dollars.

XIV.

Defendant admits the allegations of the paragraph XIII. of said bill of complaint, that written contracts of said date the 9th day of February, 1914, covering the material and prices aforesaid, were entered into by the said construction Company and the said complainant, and that all of said material was delivered to the said construction Company and was used by said Company in the construction of said irrigation system and structures.

XV.

Defendant admits that the said complainant also furnished to the said construction Company other material and supplies for use in the construction of said irrigation system, works and structures of the reasonable value of One Hundred Thirteen and Five One-hundredths (\$113.05) Dollars, which were delivered to the construction Company between the 11th and 17th days of March, A. D. 1914, and were used in the construction of said system and works.

XVI.

As to the allegations of paragraph XV. of said bill of complaint that the complainant has fully complied with all the terms and conditions of the said contracts in the said bill of complaint mentioned, by it to be kept and performed, this defendant has no knowledge and is unable to admit or deny the same.

XVII.

Admits that there is a balance due and unpaid the complainant of Nine Thousand Five Hundred Eight and Forty-two One-hundredths (\$9,508.42) Dollars.

XVIII.

This defendant admits that on the 9th day of May, A. D. 1914, and within sixty days after the delivery of the material and supplies, hereinbefore admitted, to the Slick Brothers Construction Company, Limited, the complainant filed for record in the office of the County Recorder of Washington County, Idaho, a pretended claim of lien, and a copy thereof is attached to the bill of complaint marked "Exhibit A;"

that said pretended claim of lien was verified and was recorded on said day in the records of said County in Book 2 of liens at page 83 to page 88 inclusive, at thirty minutes past nine o'clock in the forenoon of said day; and that complainant paid the recorder of said County the sum of six and sixty one-hundredths (\$6.60) Dollars for filing and recording the same.

XIX.

Admits that the whole of the lands, right of way, reservoir site, water rights, water appropriations, easements, rights and franchises described in said pretended claim of lien are required for the convenient use of the said irrigation system; but defendant denies that the same must be sold as one parcel or at all.

XX.

Defendant denies that the complainant has been compelled to employ counsel for the foreclosure of said pretended lien or for the collection of the amount due as aforesaid, and denies that fifteen hundred (\$1500.00) Dollars or any other sum of money is a necessary or reasonable attorney's fee for the foreclosing of said pretended lien, or that complainant is entitled to any counsel fee whatever for the collection by suit or otherwise of the said sums herein admitted to be due.

XXI.

Defendant admits that it owns and claims to own and has an interest, right and estate in and to the

irrigation system, right of way, water rights, and reservoir site in said bill of complaint and hereinbefore in this answer described; and defendant denies that its interest is in anywise subject, subsequent, or subordinate to the said pretended claim of lien of the complainant.

XXII.

This defendant admits that some pretended claims of lien have been filed against its irrigation system, lands, and rights of way, and water rights alleged to have arisen out of the construction of the said system, but as to the amounts thereof the defendant has no knowledge sufficient to enable it to deny or admit the same; and this defendant upon its information and belief denies that the said Crane Creek Irrigation Land and Power Company is unable to pay or discharge its indebtedness as represented by said pretended claims of lien, and denies that in order to properly preserve, protect or maintain said system, water rights, easements, rights and franchises appurtenant thereto and necessary to the use and operation thereof, or to protect the said complainant or other pretended lien claimants, a receiver should be appointed for said system, property, rights and franchises, and denies that the said irrigation system, property, rights and franchises can be administered by a receiver.

XXIII.

Further answering the said bill of complaint this defendant alleges:

That it is and during all the times hereinbefore and hereinafter mentioned was a public corporation organized and existing as an irrigation district under and by virtue of the laws of the State of Idaho and particularly under the provisions of Title XIV., Political Code, Revised Codes of Idaho, and the laws supplemental and amendatory thereof, for the purposes of supplying that portion of the public owning, occupying, using, or cultivating lands within its boundaries with water from the public streams and public unappropriated waters for household, domestic, and irrigating purposes, and the cultivation of lands, and that its irrigation system, works, reservoir sites and water rights, as described in the bill of complaint herein and in this answer, during all the times in said bill of complaint and in this answer mentioned were and now are dedicated to a public use as aforesaid; that this defendant has hereinbefore issued its bonds in the par value of Five Hundred Thirty-seven Thousand and Eight Hundred (\$537,800.00) Dollars, in the aggregate, which said bonds have been sold and distributed to numbers of individuals and corporations in different states, and which said bonds are by force of the laws of Idaho charged as a first lien upon this defendant's irrigation system, works, water rights, and reservoir sites; that on the 31st day of August, A. D. 1911, the board of directors of this defendant filed its petition in the District Court in and for the County of Washington of the State of Idaho, for a confirmation of the proceedings by which defendant was organized as an

irrigation district and thereafter such proceedings were had; that a judgment of said Court was entered as follows, to-wit: "that all acts and things done and performed by the board of County Commissioners in the organization of said District, and all acts and things done and performed by said District and its board of directors from the filing of the petition for the organization of said District up to the date of the filing of the petition for confirmation thereof, were and are legal and valid and are by the Court approved and confirmed;" and thereupon an appeal was taken from said judgment of confirmation to the Supreme Court of the State of Idaho, which Court on the second day of January, A. D. 1912, entered its judgment affirming the judgment of the court below.

And this defendant, Sunnyside Irrigation District, alleges that no lien for material or otherwise furnished to the Slick Brothers Construction Company, Limited, by the complainant herein, is given by the laws of the State of Idaho, and that the pretended claim of lien set up and asserted by the complainant in its bill of complaint herein is without authority of law and of no force and effect.

Wherefore, having fully answered this defendant prays that the pretended claim of lien asserted by the complainant herein against the property of this defendant be denied; that complainant take nothing by its said bill against this defendant or its property; and that this bill be dismissed as against this defendant; and that defendant have and recover its reason-

able costs and charges in this behalf wrongfully incurred.

SUNNYSIDE IRRIGATION DISTRICT,

By August Brockman,

President.

ED. R. COULTER, Weiser,

N. M. RUICK, Boise,

C. S. VARIAN, Salt Lake City, Utah,

Solicitors for

Sunnyside Irrigation District.

Service with copy admitted this 3rd day of February, A. D. 1915.

RICHARDS & HAGA,

Solicitors for Complainant.

*In the District Court of the United States, District
of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY,

Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Ltd., a corporation, et al.,

Defendants.

In Equity, No. 511.

Amendment to answer of Sunnyside Irrigation District to Bill of Complaint.

The defendant Sunnyside Irrigation District by leave of Court first had and obtained, makes the following amendment to its answer to the Bill of Complaint, by striking from the first two lines of paragraph 11 of said answer, the following:

“Admits that this defendant and the defendant Crane Creek Irrigation District are the owners of” and inserting in lieu thereof:

“This defendant denies that the Crane Creek Irrigation Land and Power Company during all or any of the times mentioned in said bill, was or still is the owner or reputed owner of the lands, irrigation system, works or water rights described in paragraph 11 of said Bill of Complaint, but, on the contrary, this defendant alleges that said Crane Creek Irrigation Land and Power Company, this defendant and defendant Crane Creek Irrigation District during all of said times were and still are the owners of”.

SUNNYSIDE IRRIGATION DISTRICT,

By Ed. R. Coulter,

(Corporate Seal)

Secretary.

ED. R. COULTER,

C. S. VARIAN,

Solicitors for Sunnyside Irr. Dist.

Endorsed: Filed Feb. 3, 1915. A. L. Richardson,
Clerk. By Pearl E. Zanger, Deputy.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,

Plaintiff,

v.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a

corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, et al.,

Defendants,

And

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation,

Cross-Complainant,

v.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, et al.,

Cross-Defendants,

And

MANEY BROTHERS & CO., (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells),

Cross-Complainant,

v.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, et al.,

Cross-Defendants.

In Equity, No. 511.

Statement of Evidence by and for Crane Creek Irrigation District and Sunnyside Irrigation District, Defendants.

E. R. Coulter, a witness for the Crane Creek Irrigation District and the Sunnyside Irrigation District, testified as follows:

That he was a practicing attorney living at Weiser, Idaho, and was the secretary of the Sunnyside

Irrigation District and had the custody of all the records of said district; that he had been the attorney for the Sunnyside Irrigation District and the Crane Creek Irrigation District since their organization, and that he organized the districts and was familiar with all of their transactions from their inception to the present time; that Exhibit "B" was the original contract entered into at the date therein mentioned by the Crane Creek Irrigation Land & Power Company and the Sunnyside Irrigation District; that Exhibit "N" was a contract between the Crane Creek Irrigation Land & Power Company and the Sunnyside Irrigation District for an extension of time when the Crane Creek Irrigation Land & Power Company should give the indemnity bond called for by the contract marked Exhibit "B;" that Exhibit "O" was the contract dated April 19, 1913, between the same parties for an extension of time for completion of the system, or for certain portions thereof; that the first issue of bonds of the Sunnyside Irrigation District was of date January 1, 1910, and that there were 550 of said bonds of the total par value of \$415,000; that the next issue of bonds was of July 1, 1911, being 208 of the par value of \$150,000.00, all of the Sunnyside District and the aggregate value thereof being \$565,000.00; that no other bonds for the Sunnyside Irrigation District have since been issued.

It was stipulated in open Court by and between the solicitors for the plaintiff and the solicitors for the Crane Creek and Sunnyside Irrigation Districts that the contracts in evidence hereinbefore referred to

were identical with the contracts made with the Crane Creek Irrigation District by the Crane Creek Irrigation Land & Power Company with the exception that there was a difference in the respective contracts in the matter of the interests the said districts severally had in the property to be constructed and conveyed.

Resuming, the witness further testified:

That the original contracts,—contract “B,” and the similar contract with the Crane Creek Irrigation District, contemplated an interest in the system and reservoir in proportion to the amount of acreage of land in the two districts. Since the execution of those contracts on August 22, 1910, additional acreage of land has been taken into each of the districts, and the percentages, as called for in that contract are not the correct percentages at this date;

On cross-examination, the witness further testified:

That with relation to the percentages of the bonds delivered by the districts the same were as follows, namely: Where the construction work was in common for the two districts it was paid for by the two districts in the proportion of 32% and 68%,—32% by the Crane Creek Irrigation District and 68% by the Sunnyside Irrigation District,—and where the work was not in common,—that is, where it was work entirely within one irrigation district,—that irrigation district paid for the work in its entirety.

The dates and amounts of bonds delivered by each district were as follows:

April 13, 1913, Sunnyside Irrigation District delivered to Crane Creek Irrigation Land & Power Company \$151,000 of bonds, and on the same date the Crane Creek Irrigation District delivered to the same corporation \$99,000 of bonds, all at par value. This was the first delivery. At that time each of the districts received an estimate of the amount of work that had been done in the construction of the reservoir. A form of deed, according to the witness's recollection, was presented at that time but not formally delivered until a short time after. The deliveries were based in part upon the estimates furnished by the engineers of the cost of the reservoir. \$51,000 of bonds of the Sunnyside Irrigation District were for construction work on the reservoir and \$100,000 of bonds were delivered on the execution and delivery of the indemnity bond called for by the terms of the contract. The Crane Creek Irrigation Land & Power Company delivered to the two districts a joint and several bond for the fulfillment of those two contracts of August 22, 1910, signed by the Aetna Accident & Liability Company of Hartford, Connecticut. Of the \$99,000 of bonds delivered by the Crane Creek Irrigation District, \$75,000 was delivered on the execution of this indemnity bond and the difference between \$75,000 and \$99,000 was delivered on the estimate of the engineers on the construction of the reservoir. The total amount of bonds delivered on account of the indemnity bond was \$175,000. The next delivery was made on June 13, 1913, on which day the Sunnyside Irrigation District delivered \$21,000 in bonds and the Crane Creek District

delivered \$5,000 in bonds,—both deliveries based on the monthly estimates of the engineers; the next delivery was on July 18, 1913,—by the Sunnyside District \$28,000 and by the Crane Creek District \$45,000,—both deliveries based on the monthly estimates of the engineers; the next delivery was on September 17, 1913,—\$48,700 by the Sunnyside District and \$18,500 by the Crane Creek District, both deliveries based on the estimates of the engineers; the next delivery was on December 11, 1913. Here the witness said:

“Now, an explanation occurs here. One of the exhibits there shows a contract of date October 16, 1913, executed between all of these parties, the two districts and the Crane Creek Irrigation Land & Power Company, whereby all the remaining bonds were placed in escrow with the First National Bank of Weiser. The Crane Creek Company had obtained a syndicate of bankers at Kansas City and Pittsburg who had agreed to take the whole issue at sixty cents on the dollar, and, for convenience, and to meet with the demands of that syndicate, all the bonds were escrowed with the bank, and with the agreement that as the monthly estimates came in from the engineers and were allowed by the districts and were approved by the districts, that the districts would, in lieu of the actual delivery of bonds to the Crane Creek Irrigation Land & Power Company, give them orders upon this bank, trustee, to pay the money proceeds of the bonds, or if they had not been sold, in lieu of the proceeds, to pay them the bonds direct; and this

contract was again subsequently changed by the contract of November 21, 1913, which is also one of the exhibits here, and under this contract the trustee was changed from the First National Bank of Weiser to the Commerce Trust Company of Kansas City, Missouri, under the same terms and conditions. So the estimate of December 11, 1913,—there were two estimates allowed and approved at that date—and on December 11, 1913, the Sunnyside Irrigation District gave to the Crane Creek Irrigation Land & Power Company an order on the Commerce Trust Company of Kansas City to pay to the Irrigation Land & Power Company the proceeds of \$38,300 of the coupon bonds at par value under that contract of November 21, 1913.”

Proceeding, the witness testified as follows:

On the same date it (Sunnyside District) gave another order to the same party on the Commerce Trust Company for the sale proceeds of \$19,964 of bonds and on the same date the Crane Creek District gave similar orders to the Irrigation Land & Power Company on the Commerce Trust Company, one for \$16,623 and the other for \$2,838, both orders based upon the monthly estimates of the engineers; that there were no deliveries between September 17th and December 11th, 1913; that during this time Mr. Ford and Mr. Slick and others had gone back east to make arrangements to get the bonds sold; that the next delivery was made on January 10, 1914, when the Sunnyside District delivered an order for the proceeds of \$27,842 and the Crane Creek District de-

livered an order for the proceeds of \$5,253; on the same basis as before—sixty cents on the dollar; the next delivery was made February 4, 1914, by the Sunnyside District \$12,963.66, and by the Crane Creek District for \$5,031.08 in bonds; these bonds were also held in escrow by the Commerce Trust Company under an escrow agreement between the irrigation districts and the Crane Creek Irrigation Land & Power Company and were delivered upon the engineers' estimates to pay the proceeds of so many dollars of bonds. Here the witness said that he had copies of all of those orders and receipts if they were desired. Resuming, he testified as follows:

The next delivery was made on March 3, 1914 by the Sunnyside District \$31,235, and by the Crane Creek District \$13,230, each being for the proceeds of that much of the bonds at par value; that the procedure was the same as upon the previous deliveries. That the next delivery was on April 1, 1914, by the Sunnyside District for the proceeds of \$69,390 of the bonds, and by the Crane Creek District for the proceeds of \$32,650 of the bonds; that the next delivery was on May 5, 1914, by the Sunnyside District for the proceeds of \$33,335 and by the Crane Creek District for the proceeds of \$26,675. That on June 6, 1914, the Sunnyside District delivered \$49,100 and the Crane Creek District delivered \$15,700, based on the engineers' estimates, and the proceeds were delivered by the escrow holders; on December 28, 1914, the delivery was, by the Sunnyside District \$7,000 and by the Crane Creek District \$2,000, the procedure being the same as heretofore explained; before

this delivery the Commerce Trust Company had returned to the First National Bank of Weiser all the bonds that had not been sold, but they still held the balance of cash on hand belonging to the districts, and this last order, as I recall it, was given in duplicate,—that is it was given to the two banks as trustees, but the procedure was the same. That was for an estimate that had never been presented to the Board—it was not presented until December. All of the bonds of the two districts have not yet been delivered. The Crane Creek Irrigation District still has on hand and undelivered \$9,017.62 of bonds at par, and the Sunnyside District has \$27,170.24 that have not been delivered. These bonds are covered by these contracts. That is, they are held by the districts under the provisions of those contracts of August 22, 1910, as amended; when the Crane Creek Irrigation Land & Power Company shall have completed its contracts they will be entitled to the delivery of the remainder of those bonds.

On redirect examination the witness testified:

The delay in the delivery of the bonds was because the Power Company did not call for them and present the estimates; Exhibit "T" of date January 3, 1911, in relation to extending the time for delivery of bonds is an original paper.

Edwin D. Ford, a witness for the Crane Creek and Sunnyside Irrigation Districts, testified as follows:

That he was the president of the Crane Creek Irrigation Land & Power Company; that from the be-

ginning he was looking after the work for the said Land & Power Company and its business with the districts and the construction company; that at the time of the execution of the original contract of August 22, 1910, between the Crane Creek Irrigation Land & Power Company and the irrigation districts, referring to the recital in the contract aforesaid, the Crane Creek Irrigation Land & Power Company was the owner of a partially completed irrigation system, that the said company had actually completed nothing but had acquired a right-of-way and reservoir site; it owned the reservoir site and certain rights to waters and water appropriations; that part of the Sunnyside canal or ditch belonged to that company but nothing had been done on their reservoir; that it owned the land of the reservoir site, and some rights-of-way and water permits. A series of deeds from the Crane Creek Irrigation Land & Power Company to the Crane Creek Irrigation District, numbered from 1 to 13 inclusive, and from the Crane Creek Irrigation Land & Power Company to the Sunnyside Irrigation District, numbered from 1 to 13 inclusive, purporting to convey from time to time certain percentages of interest in the constructed work to the said districts, were received in evidence.

Resuming, the witness testified:

That the final percentages of interest in the system used in common were, Sunnyside District 47.2%, and the Crane Creek District 22.4%, and the laterals and canals within those districts belonged wholly to the districts.

Attached to and made a part of this statement, of the case, are the Exhibits as follows: Plaintiff's Exhibits Nos. 1-A and 1-B, 37, 38, 39; also the attached Abstracts of 13 deeds executed by Crane Creek Irrigation Land & Power Company to Sunnyside Irrigation District, and 13 deeds executed and delivered by the Crane Creek Irrigation Land & Power Company to the Crane Creek District. No one of which deeds was ever recorded excepting the two deeds dated May 29, 1913, which were recorded on November 19, 1914.

Evidence was introduced by the Plaintiff tending to establish all the facts alleged in the bill of complaint.

The foregoing is all the evidence material or relevant to the issues between the plaintiff and the irrigation districts defendants.

C. S. VARIAN,
E. R. COULTER,

Solicitors for Sunnyside and Crane Creek Irrigation Districts.

Service with copy admitted this 8th day of July, 1915.

RICHARDS & HAGA,
Solicitors for Plaintiff.

The above and foregoing statement of evidence is hereby duly settled, allowed, signed and made a part of the record in this action this 17th day of July, 1915.

FRANK S. DIETRICH,
District Judge.

STIPULATION.

It is hereby stipulated and agreed by and between the Portland Wood Pipe Company, plaintiff above named and the Crane Creek Irrigation District and the Sunnyside Irrigation District, defendants, through their representative solicitors, that all original exhibits introduced in the above entitled cause may, with the consent of the Court be transmitted to the clerk of the United States Circuit of Appeals for the Ninth Circuit before the hearing of the cause in said Court and the same may be used upon the argument or the hearing of said cause in said Court, and shall be considered as part of the record on the hearing therein as fully and to the same extent as if transcribed and printed in the record, and appellants shall have the right, and they shall do so if requested by appellees and if it be deemed necessary by the Court to print as part of the record on appeal any exhibits or any other part of the record or of the evidence taken in said cause not included in the statement, this day settled and allowed.

Dated this 17th day of July, 1915.

RICHARDS & HAGA,
Solicitors for Plaintiff.

C. S. VARIAN and
E. R. COULTER,

*Solicitors for Defendants, Crane Creek and
Sunnyside Irrigation Districts.*

Approved: Frank S. Dietrich, District Judge.

PLAINTIFF'S EXHIBITS NO. 1-A & 1-B.

This Contract, entered into the 9th day of February, 1914, by and between the Portland Wood Pipe Company, a corporation organized under the laws of the State of Oregon, hereinafter known as "Pipe Company," and the Slick Brothers Construction Company, Limited, a corporation organized under the laws of the State of Idaho, hereinafter known as "Construction Company," which contract shall be binding not only upon the parties hereto, but their successors and assigns: whereas,

The said Construction Company is about to install a pipe line for the carrying of water on the project and lands of the Crane Creek Irrigation Land & Power Company, at or near Crane Station in the County of Washington, State of Idaho, and desires to purchase from the said Pipe Company approximately twenty-one hundred and seventy-five (2175) feet of twenty (20) inch machine banded wire wound wood stave pipe for the purpose, said pipe to be delivered f. o. b. cars Crane Station, Idaho, in accordance with the conditions hereinafter named:

Now, therefore, the said Pipe Company agrees to furnish said twenty (20) inch pipe under the following conditions, to-wit:

The material entering into the construction of said pipe, and the method of manufacture, to be in accordance with the specifications attached hereto.

Twenty (20) inch pipe, fifty (50) foot head, three (3) inch spacing, Number two (2) wire, one and three-eighths ($1\frac{3}{8}$) inch shell, individual band coup-

lings, at the price of seventy-two cents (72c) per foot, f. o. b. cars, Crane Station, Idaho.

Twenty (20) inch pipe, seventy-five (75) foot head, two (2) inch spacing, Number two (2) wire, one and three-eighths ($1\frac{3}{8}$) inch shell, individual band couplings, at the price of eighty-one and one-quarter cents ($81\frac{1}{4}$ c) per foot, f. o. b. Crane Station, Idaho.

The said Construction Company agrees to pay for said pipe at the price above named, and to furnish the order for said pipe so that the Pipe Company may take advantage of car load shipments in makings shipments of said pipe; said Construction Company is to give said Pipe Company ten (10) days notice prior to the time that shipment of the pipe is expected to be made from Portland, Oregon; the said Pipe Company is to begin shipments of said pipe from Portland, Oregon, within ten (10) days after receipt of said notice, and to furnish said pipe at the rate of at least one (1) car per each working day until order is completed:

Crane Station, Idaho, is a prepay station and the Construction Company agrees to make arrangements with the railroad company so that freight charges may be paid at Weiser, Idaho, on arrival of shipments, and thus prevent the necessity of prepayment of freight charges before shipment goes forward from Portland, and the said Construction Company agrees to furnish the said Pipe Company with a copy of the authority of the railroad company to permit

such shipments to go forward without prepayment of freight charges;

The said Construction Company agrees to receive the pipe, pay the freight charges, and take same from cars immediately upon arrival of the cars and within the free time permitted by the rules of the railroad company, and if such cars are not unloaded within the free time that they will pay any demurrage charges that may accrue on account of their failure to remove said pipe from said cars.

The Construction Company agrees to inspect said pipe within three days of the time of its arrival at Crane Station, Idaho, and to report immediately and furnish proper affidavits for any damage or shortage of pipe in said cars, and if possible to have railroads agent's notation upon the original expense bill, as to damage or shortage;

The said Construction Company agrees to pay for said pipe at the prices named, and within thirty (30) days of the date of invoice and shipment of each car load of said pipe;

The said Pipe Company agrees to credit the account of the said Construction Company with the amount of freight charges paid upon presentation of the original receipted expense bill for such charges;

The said Construction Company agrees that the said Pipe Company shall not be held responsible for any delays caused by strikes, floods, or any other causes beyond their control;

In Witness Whereof, The parties hereto have caused these presents to be duly executed by the pro-

perly constituted officers who have authority so to do, on the day and year first above written.

PORTLAND WOOD PIPE COMPANY,

By F. M. Baum, General Manager.

SLICK BROTHERS CONSTRUCTION CO., Ltd.

By W. B. Slick, President.

I, A. J. Wiley, acting as consulting engineer for the Crane Creek Irrigation Land & Power Company, have examined the foregoing contract and the same meets with my approval.

.....day of....., 1914.

.....
*Consulting Engineer for Crane Creek
 Irr. Land & Power Co.*

Endorsed: Filed, March 25, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

SPECIFICATIONS.

For Machine Banded Wire Wound Wood Stave Pipe.

All pipe to be furnished under these specifications shall be wire wound wood stave pipe of first class quality complying with the following specification.

Stave. The Staves shall be cut from first class yellow or Douglas fir, thoroughly kiln dried before being milled, and it shall be perfectly sound, straight-grained, entirely free from knots, dry rot, pitch seams, wind shakes, cracks, or any defects that will impair the strength or durability of the pipe. Sap wood penetrating more than one-half inch into the inner surface of the stave shall not be permitted.

Small, tight knots less than $\frac{3}{4}$ inch in diameter, will be permitted, providing they do not run through the staves at any point, and pitch pockets will be allowed, provided they do not exceed 3 inches in length or $\frac{1}{2}$ inch in depth. No pitch seams or knots of any description will be allowed on the edges or sides of the staves.

The finished thickness of the staves shall be $1\frac{3}{8}$ inches and the staves shall be milled from stock of ample width and thickness to insure full finished dimensions and good true surfaces and edges. The sides of the staves shall be dressed to the proper inside and outside circumference of the pipe and the edges to true radial lines.

Wire. All pipe shall be wound with double galvanized steel wire of suitable size and spacing for the various heads. The steel in the wire shall have a tensile strength of 60,000 lbs. per square inch and shall show an elongation in 8 inches before breaking, of 20% and shall be capable of bending cold 180 degrees without signs of fracture.

The size and spacing shall be such that the wire has at all points a factor of safety not less than 4 against the strain produced by water pressure plus a lateral pressure per square inch between the staves equal to one and one-half times the water pressure. The initial tension put in the wire as it is wound upon the pipe shall be $\frac{3}{4}$ of its tensile strength, and it shall be wound in such manner as to give a uniform strain in the wire at all points on each length of pipe.

Couplings. The couplings shall be of the wood sleeve type, with individual bands of proper size and number to suit the bands. The bands for couplings shall be provided with the same factor of safety and the steel in these shall comply with the same specifications as are given above for the pipe. The ends of the pipe shall be properly headed to fit snugly in the sleeve couplings.

Dipping. The outside surface of all pipe and all couplings shall be thoroughly dipped in a bath of hot tar and asphalt of proper mixture. Care shall be taken in dipping to protect the tenon ends of the pipe and the inside of the coupling so as to leave these smooth for securing a tight fit at the joints, after dipping, the pipe shall be rolled through a bed of sawdust, to provide a protective covering over the tar and asphalt coating.

This Contract, Entered into on the 9th day of February, 1914, by and between the Portland Wood Pipe Company, a corporation organized under the laws of the State of Oregon, hereinafter known as the "Pipe Company" and the Slick Bros. Construction Company, Limited, a corporation organized under the laws of the State of Idaho, hereinafter known as "Construction Company," which contract shall be binding not only upon the parties hereto, but their successors and assigns; Whereas,

The said Construction Company is about to install continuous stave pipe lines of twenty-four (24)

inches, sixty-two (62) inches, fifty (50) inches, forty-two (42) inches and fifty-four (54) inches in diameter, for the purpose of carrying water on the project and the lands of the Crane Creek Irrigation Land & Power Company, at or near Crane Station, in the County of Washington, State of Idaho, and desires to purchase from the said Pipe Company the material to be used in said pipe construction in accordance with the conditions hereinafter named;

Now, therefore, the same Pipe Company agrees to furnish the material hereinafter stated on the following conditions, to-wit:

Staves for eleven hundred and forty-five (1145) feet of twenty-four (24) inch pipe, with a finished thickness of shell of one and one-half ($1\frac{1}{2}$) inches in accordance with the specifications in Exhibit No. 1 attached hereto, and staves for nine hundred thirty-five (935) feet of twenty-four (24) inch pipe with the same finished thickness of shell, in accordance with specifications as shown in Exhibit No. 2 attached hereto;

The necessary metal tongues of No. 12 gauge, to be used between the butt end joints of staves;

Ninety-one hundred and fifty-six (9156) ($\frac{1}{2}$) inch bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment.

Ninety-one hundred fifty-six (9156) malleable cast iron shoes to be used with said bands;

All f. o. b. cars, Crane Station, Idaho, for the sum of Thirty Hundred Forty-three (\$3043.25) Dollars and Twenty-five Cents.

Staves for eighteen hundred fifty-one (1851) feet of sixty-two (62) inch pipe, with a finished thickness of shell of two and one-eighth ($2\frac{1}{8}$) inch; in accordance with the specifications in Exhibit No. 1 attached hereto;

The necessary metal tongues of No. 12 gauge to be used between butt end joints of staves;

Seventy-nine hundred eighty-one (7981) five-eighths ($\frac{5}{8}$) inch bands in two pieces, complete with nuts and washers, bands bent to form and coated prior to shipment;

Fifteen thousand nine hundred sixty-two (15,962) malleable cast iron shoes to be used with said bands;

All f. o. b. cars, Crane Station, Idaho, for the sum of Ninety-one Hundred Ninety-eight Dollars (\$9198).

Staves for seven hundred thirty (730) feet of fifty (50) inch pipe, with a finished thickness of shell of two and one-eighth ($2\frac{1}{8}$) inches, in accordance with the specifications in Exhibit No. 1 attached hereto, and staves for twenty-one hundred seventy (2170) feet of fifty (50) inch pipe with the same finished thickness of shell in accordance with specifications in Exhibit No. 2 attached hereto.

The necessary metal tongues of No. 12 gauge to be used between the butt end joints of staves;

Eighteen thousand seven hundred eighty-five (18,785) five-eighths ($\frac{5}{8}$) inch bands in one piece, complete with nuts and washers, bands bent to form and coated prior to shipment;

Eighteen thousand seven hundred eighty-five (18,785) malleable cast iron shoes to be used with said bands;

All f. o. b. cars Crane Station, Idaho, for the sum of Fourteen Thousand Two Hundred and Nine Dollars and Thirty-four Cents (\$14,209.34).

Staves for thirty-three hundred ninety-two (3392) feet of forty-two (42) inch pipe, with a finished thickness of shell of one and five-eighths ($1\frac{5}{8}$) inches, in accordance with the specifications in Exhibit No. 1 attached hereto, and three hundred fifteen (315) feet of forty-two (42) inch pipe with the same thickness of shell in accordance with specifications in Exhibit No. 2 attached hereto;

The necessary metal tongues of No. 12 gauge to be used between the butt end joints of staves;

Fifty-eight hundred thirty-three (5833) half ($\frac{1}{2}$) inch bands in one piece;

Fifty-two hundred sixty-five (5265) five-eighths ($\frac{5}{8}$) inch bands in one piece; all complete with nuts and washers, bands bent to form and coated prior to shipment;

Fifty-eight hundred thirty-three (5833) malleable cast iron shoes to be used with one-half ($\frac{5}{8}$) inch bands;

Fifty-two hundred sixty-five (5265) malle-

able cast iron shoes to be used with five-eighths ($\frac{5}{8}$) inch bands;

All f. o. b. cars Crane Station, Idaho, for the sum of Seven Thousand Two Hundred and Forty-two Dollars and Sixty Cents (\$7,242.60).

Staves for eight hundred twenty (820) feet of fifty-four (54) inch pipe with a finished thickness of shell of one inch and seven-eighths ($\frac{17}{8}$) inches; in accordance with the specifications in Exhibit No. 1 attached hereto;

The necessary metal tongues of No. 12 gauge to be used between the butt end joints of staves;

Fifteen hundred eighty-three (1583) malleable cast iron shoes to be used with said bands;

All f. o. b. cars Crane Station, Idaho, for the sum of Twenty-one Hundred and Thirty-three Dollars and Thirty Cents (\$2,133.30).

The steel bands in the above mentioned material, as well as the malleable cast iron shoes, to be in accordance with specifications included in Exhibit No. 1 attached hereto.

The said Construction Company agrees to pay for said material at the prices above named, and to furnish the order for said material so the Pipe Company may take advantage of carload shipments in making shipments of said material;

Crane Station, Idaho, is a prepay station and the Construction Company agrees to make arrangements with the railroad company so that freight charges may be paid at Weiser, Idaho, on arrival of ship-

ments, and thus prevent the necessity of prepayment of freight charges before shipment goes forward from the different shipping points, and the said Construction Company agrees to furnish the said Pipe Company with a copy of the authority of the railroad company to permit such shipments to go forward without prepayment of freight charges;

The said Construction Company agrees to receive the said material, pay freight charges, and take same from cars immediately upon arrival of the cars, and within the free time permitted by the rules of the railroad company, and if such cars are not unloaded within the free time that they will pay any demurrage charges that may accrue on account of their failure to remove said material from said cars.

The Construction Company agrees to inspect said material within five (5) days of the time of its arrival at Crane Station, Idaho, and to report immediately and furnish proper affidavits for any damage or shortage of material in said cars, and if possible to have railroad agents notation upon the original expense bill as to damage or shortage;

The said Construction Company agrees to pay for said material at the prices named and within thirty (30) days of the date of invoice and shipment of each shipment of said material;

The said Pipe Company agrees to credit the account of the said Construction Company with the amount of freight charges paid upon presentation of the original receipted expense bill for such charges;

The said Construction Company agrees that the said Pipe Company shall not be held responsible for any delays caused by strikes, floods, or any other causes beyond their control; that shipments shall start at once and last shipment to be forwarded in time to arrive at Crane Station by April 10, 1914. Subject to delay beyond Pipe Company's control.

In Witness Whereof, The parties hereto have caused these presents to be duly executed by the properly constituted officers who have authority so to do, on the day and year first above written.

PORTLAND WOOD PIPE COMPANY,

By F. M. Baum,

General Manager.

SLICK BROS. CONSTRUCTION CO., Ltd.,

By W. B. Slick,

President.

I, A. J. Wiley, acting as Consulting Engineer for The Crane Creek Irrigation, Land & Power Company, have examined the foregoing contract and the same meets with my approval.

9th day of February, 1915.

A. J. WILEY,

Consulting Engineer for the Crane Creek Irrigation, Land & Power Company.

PORTLAND WOOD PIPE COMPANY
SPECIFICATIONS

For Continuous Stave Wood Pipe Material.

Staves. Staves shall be made of live timber known

as Oregon or Douglas Fir, sound, straight-grained, entirely free of all deadwood, rotten knots, dry rot, shakes, cracks, or any other imperfections or defects that might impair its strength or durability.

Pitch seams not extending more than one-quarter ($\frac{1}{4}$) of the way through the thickness of the stave will be allowed. Small tight sound knots not over three-quarters ($\frac{3}{4}$) of an inch in diameter not penetrating through thickness of stave and not occurring oftener than one in four feet of stave will be allowed. Sap on the inside of the staves and not extending more than three-quarters ($\frac{3}{4}$) of an inch in thickness will be allowed. No pitch seams or knots of any description will be allowed upon edges or sides of the staves.

All timber used must be thoroughly seasoned by either air or kiln drying before being milled into staves.

The staves shall be dressed on both sides to true circles of the inside and outside diameter of the pipe and the edges shall be dressed to conform to the radial lines of the pipe.

All staves shall be of uniform thickness, and each stave shall be of uniform width throughout its entire length, the staves may vary in length from twelve to thirty-two feet, but not more than ten per cent (10%) shall be twelve feet (12), and not more than twenty per cent (20%) shall be fourteen feet (14), and less in length.

The ends of the staves shall be cut square with the side and shall be fitted with the sawkerf for the in-

section of a metal tongue of wrought iron or steel plate No. 12 B. W. G. The size of the kerf shall be of such dimension as to make the tongue fit tight in all directions and shall be cut across the ends of the stave in exactly the same position.

The sawkerf in the end of the staves shall be one sixteenth (1-16) of an inch less in depth than one-half of the width of the metal tongue to be inserted into the stave.

The steel or wrought iron metal tongues shall be one and one-half inches ($1\frac{1}{2}$) wide, measured with the length of the pipe, and in length shall be one-eighth ($\frac{1}{8}$) of an inch longer than the width of the sawkerf across the end of the stave so that when the tongue in place it will project one-sixteenth (1-16) of an inch into the adjoining staves.

STEEL BANDS:

Manufacture. Steel shall be made by the Open Hearth.

Chemical Composition. Open Hearth Steel; Phosphorus shall not exceed 06.

Ultimate Strength. The ultimate strength shall be from 55,000 to 65,000 lbs. per square inch.

Yield Point. The yield point shall be not less than one-half of the ultimate strength and shall be determined by the drop of the beam of the testing machine.

Elongation. A minimum per cent in eight (8) inches of 1,400,000 divided by the ultimate tensile strength.

Modification in Elongation. For bands less than 7-16 and more than $\frac{3}{4}$ inches in diameter, the following modifications shall be made:

(a) For each increase of $\frac{1}{8}$ inch in diameter above $\frac{3}{4}$ inch, a deduction of 1 shall be made from the specified percentage of elongation.

(b) For each decrease of 1-16 inch in diameter below 7-16 inch, a deduction of 1 shall be made from the specified percentage of elongation.

Bend. The rods or bands shall be capable of bending 180 degrees around a diameter equal to the diameter of the specimen tested without fracture on either side.

Finish. Bands must be free from any injurious seams, flaws, or cracks, and have a workmanlike finish.

Where one-piece bands are used the bands shall be provided with a button head on one end, and the other end to be provided with five inches of cold rolled thread of United States Standard Gauge.

Where two-piece bands are used, the bands shall be made in two pieces, one piece to be provided with a button head on each end, and the other piece to be provided with not less than five inches (5) of cold rolled thread of the United States Standard Gauge on each end.

Each threaded end shall be provided with a hexagonal nut one-sixteenth (1-16) of an inch thicker than the diameter of the band. Each threaded end shall also be provided with one place washer of the proper diameter and standard thickness.

The nuts shall fit the thread of the band in such manner as to turn easily and shall give the full bearing on all of the threads of the nut.

The threads shall be of such strength as to insure that the band will break in the body or shank before breaking in the threads.

Shoes. The shoes to connect the ends of the rods shall be of malleable cast iron of the most tenacious character, such as will stand a great amount of hammering without fractures, and shall have a tensile strength of not less than forty thousand (40,000) pounds to the square inch of section. They shall be sound, smooth castings of the size and form as required for the purpose, and shall be well adapted to receive the strain induced by clinching of the bands.

Coating. All steel bands and malleable cast iron shoes shall be thoroughly coated prior to shipment with manufacturers' standard protective coating.

CRANE CREEK IRRIGATION, LAND & POWER
COMPANY—CRANE CREEK PRO-
JECT, IDAHO

Specifications for Wood Stave Pipe Line.

All pipe to be furnished under these specifications shall be continuous wood stave pipe of first-class quality complying with the following detailed specifications:

Staves. The staves shall be cut from first-class yellow, or Douglas, fir, thoroughly kiln dried before being milled, and it shall be perfectly sound, straight

grained, entirely free from knots, dry rot, pitch seams, wind shakes, cracks, or any defects that will impair the strength or durability of the pipe. Sap wood penetrating more than one-half inch into the inner surface of the stave shall not be permitted. No pitch seams or knots of any description will be allowed on the edges or sides of the staves.

On all parts of the pipe where the head is over 200 feet, the lumber used in the staves shall be perfectly clear, sound lumber, free from knots, pitch seams, or pockets, or imperfections of any description, and it shall have either vertical or bastard grain.

The sides of the staves shall be dressed to the proper inside and outside circumference of the pipe and the edges to true radial lines. No staves shall be used longer than thirty (30) or shorter than ten (10) feet, and not over ten (10) per cent shall be less than twelve (12) feet in length.

The ends of the staves shall be sawed off square and accurately slotted for a 12 Gauge tongue, the slots to be of such thickness as will provide a close fit for the tongue.

Endorsed: Filed March 25, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

PLAINTIFF'S EXHIBIT NO. 38.

Supplemental Agreement.

This Supplemental Agreement, made and entered into this 2nd day of April, A. D. 1913, by and between Slick Brothers Construction Company,

Limited, a corporation duly organized and existing under the laws of the State of Idaho (hereinafter called the "Constructor"), the party of the first part, and Crane Creek Irrigation Land & Power Company, a corporation duly organized and existing under the laws of the State of Idaho, the party of the second part, witnesseth, that:

Whereas, the parties hereto have this day entered into a contract for the construction and completion of the canals, dams, aqueducts, ditches, pipe lines, tunnels, flumes and other structures and irrigation works for the party of the second part, described therein and being the same work described in those two certain contracts in writing, each dated the 22nd day of August, 1910, by and between the party of the second part hereto and the Crane Creek Irrigation District and the Sunnyside Irrigation District;

Now, therefore, for and in consideration of the payments and agreements in said contract and in this contract hereinafter set forth, to be paid, kept and performed, it is further agreed between the parties hereto as follows, to-wit:

First. That the said contract first above referred to, and to which this agreement is supplemental, was entered into by and between the parties hereto with the understanding that the following is the amount of work of the various kinds specified still to be performed:

70,000 cu. yds. of earth in dam to be removed.

600,000 cu. yds. of earth to be removed in other structure.

- 10,000 cu. yds. of loose rock to be removed.
- 20,000 cu. yds. of solid rock to be removed.
- 3,000 cu. yds. of rip rap to be placed.
- 1,080 cu. yds. of core wall to be placed.
- 530 lineal feet of tunnel to be excavated.
- 6,800 lineal feet of 44-inch pipe.
- 2,900 lineal feet of 48-inch pipe.
- 1,050 lineal feet of 66-inch pipe.
- 800 lineal feet of 24-inch pipe.
- 1,500 lineal feet of 20-inch pipe.
- 2,725,000 board feet of lumber to be placed.

And accordingly, it is hereby covenanted and agreed that the price hereinbefore specified to be paid unto the Contractor shall be increased or diminished in accordance with changes in the amount, dimensions or character of the work to be done or materials to be furnished in accordance with the following schedule:

Excavation in earth dam.....	35c per cu. yd.
Excavation in earth elsewhere.....	15c per cu. yd.
Excavation in loose rock.....	40c per cu. yd.
Excavation in solid rock.....	\$1.20 per cu. yd.
Rip rap	\$2.00 per cu. yd.
Core wall	\$11.00 per cu. yd.
Tunnels	\$6.00 per lineal ft.
44-inch pipe	\$3.50 per lineal ft.
48-inch pipe	\$3.50 per lineal ft.
66-inch pipe	\$6.00 per lineal ft.
24-inch pipe	\$1.25 per lineal ft.
20-inch pipe	\$1.25 per lineal ft.
Lumber.....	\$30.00 per 100 bd. ft.

The party of the second part shall have the right to make such changes in the amount, dimension or character of the work to be done or materials to be furnished as in the opinion of the Chief Engineer the interests of said work or of the said party of the second part may require. But in the event the amount of work to be done and materials to be furnished by the Contractor under its said agreement for the construction of said irrigation works, exceeds the estimate above set forth, the Crane Creek Irrigation Land & Power Company shall pay for such excess at the rates above specified, such payment to be made within sixty days after the final estimate has been made; and in case the amount of work to be done and materials to be furnished by the Contractor under this agreement is less than the estimate above set forth, the Contractor shall pay the Crane Creek Irrigation Land & Power Company for the difference in amount between said estimate and the work and materials furnished, at the rates above specified.

Second. It is further agreed that all work done under said contract shall be classified upon the above basis for the purpose of arriving at each monthly estimate by A. J. Wiley, of Boise, Idaho, chief engineer for the party of the second part, or his successor in office, and payments shall only be made in accordance with the classification made by said chief engineer, which classification shall be final and conclusive upon the parties hereto.

Third. It is further understood and agreed that this agreement shall, as to the rights and interests of

J. S. and W. S. Kuhn, Incorporated, the purchasers of the bonds of said irrigation districts, have no force or effect, it being particularly agreed that they shall be held harmless by both parties hereto for any and all expenditures above the lump sum of three hundred seventy thousand Dollars (\$370,000.00) for or on account of the construction of said irrigation works. The Contractor hereby specially agrees to waive any and all liens upon the irrigation works constructed, or any part or portion thereof, for any and all sums above the lump sum above mentioned, and that in case, under the provisions of this contract, the cost of the work should exceed said sum that no lien for such excess shall ever be filed.

In Witness Whereof, the parties hereto, by authority of their respective Boards of Directors, have caused their names to be hereunto subscribed by their respective officers, and their respective corporate seals affixed, in duplicate, the day and year first above written.

SLICK BROTHERS CONSTRUCTION

COMPANY, Ltd.,

By W. B. Slick, President.

Attest: Frank B. Cross, Secretary.

CRANE CREEK IRRIGATION

LAND & POWER CO.,

By E. D. Ford, President.

Attest: E. P. Hall, Secretary.

Endorsed: Filed March 25, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

CONTRACT.

This Agreement, made and entered into this 2nd day of April, A. D. 1913, by and between Slick Brothers Construction Company, Limited, a corporation duly organized and existing under the laws of the State of Idaho, hereinafter called the "Contractor," party of the first part, and Crane Creek Irrigation Land & Power Company, a corporation duly organized and existing under the laws of the State of Idaho, the party of the second part;

Witnesseth: That the parties hereto for and in consideration of the payments, covenants and agreements hereinafter set forth, to be paid, kept and performed, have mutually covenanted and agreed for themselves, their successors and assigns as follows:

First. The contractor shall construct and complete all the canals, dams, aqueducts, ditches, pipe lines, tunnels, flumes and other structures and irrigation work of the party of the second part hereto as particularly set forth and described in the plans and specifications thereof, hereto attached, marked "Exhibit A," and made a part hereof, being the same work described in those two certain contracts in writing, each dated the 22nd day of August, 1910, by and between the party of the second part hereto and the Crane Creek Irrigation District and the Sunnyside Irrigation District, copies of each of which said contracts and Contractor hereby acknowledges to have received and read prior to the signing of this agreement, including the completion in all respects of the dam for said irrigation system now partially constructed, to

the full height of sixty-four (64) feet, and shall furnish all material necessary for the construction and completion of said irrigation work, and shall construct and complete the same in a workmanlike and substantial manner to the satisfaction and approval of A. J. Wiley of Boise, Idaho, the Chief Engineer of the party of the second part hereto.

Second. The Contractor shall commence the work hereinbefore described and set forth in the plans and specifications hereto attached on or before the 21st day of April, 1913, and shall fully complete the same on or before the first day of January, 1914.

Third. The Contractor shall perform the work hereinbefore described and shall not sublet or transfer the same, or any portion thereof, without the written consent of the Chief Engineer of the party of the second part hereto, and the written consent of said Chief Engineer shall not release the Contractor from any obligation to the party of the second part hereto or to the persons so employed by the sub-contractors, and in all cases the sub-contractors shall be considered merely as foremen employed by the Contractor and liable to be discharged for incompetence, neglect of duty or misconduct.

Fourth. The performance of the work shall be under the direction and supervision of the Engineer of the party of the second part for the time being in charge, who shall have the right to reject and condemn any or all of the work which in his opinion does not conform to the plans and specifications hereto attached (subject, however, to the final approval of the

Chief Engineer), and all such imperfect or insufficient work or material shall be immediately remedied by the Contractor at the Contractor's sole cost and expense and to the satisfaction of the Engineer; provided, however, that the Contractor shall be under no obligation to remedy or change any work or material which it believes to conform to the plans and specifications hereto attached, unless or until it shall have received written notice from the Chief Engineer to the effect that said work or material are not in accordance with the plans and specifications hereto attached.

Fifth. The party of the second part shall pay or cause to be paid to the Contractor, its successors or assigns, for the construction and completion of the work hereinbefore described, as set forth in the plans and specifications hereto attached and marked Exhibit "A," the sum of Three Hundred Seventy Thousand (\$370,000) Dollars, lawful money of the United States of America, payable monthly in installments equal to the approximate estimate of the Engineer of the party of the second part hereto, approved by its Chief Engineer.

Sixth. Approximate estimates of the value of the work done or material furnished for the preceding month on the basis of the unit prices hereinafter specified shall be made on or about the first day of each month by the Engineer of the party of the second part in charge of the work, subject to the approval of the Chief Engineer, and the amount of said estimate shall be paid to the Contractor on or before the

15th day of said month. The balance due on the final estimate shall be paid by the party of the second part unto the Contractor within sixty days after the completion of the work upon certificate of the Chief Engineer that the whole work provided for in this agreement has been acceptably completed within the time specified, and the Contractor shall before said final payment is made, sign and deliver to the party of the second part a valid release and discharge of and from all claims and demands whatsoever, based upon the provisions of this contract.

Seventh. The Chief Engineer in preparing his final estimate and giving his final certificate need not be bound by the preceding estimates and certificates, which shall be held to be only approximate and in no case shall be taken as an acceptance of the work or a release of the Contractor for responsibility therefor until the final estimate is made and the work in its entirety is accepted as complete under this agreement.

Eighth. The Contractor agrees to prosecute the work diligently to completion and if the said Contractor shall fail to prosecute the work with a force sufficient in the opinion of the Chief Engineer to insure its completion within the time specified in this agreement or if the character of the work is not in accordance with the plans and specifications hereto attached, the Chief Engineer may serve written notice on the Contractor to at once supply such increases of force, appliances or tools, or to cause such improvement in the character of the work or materials as may

be required to make the same conform to the stipulations of this agreement, plans and specifications; and if at the expiration of ten days after the service of such written notice upon the Contractor personally, or by leaving the same at the Contractor's office or last known place of business, the Contractor shall have failed to comply with such notice, the Chief Engineer shall have full power to take charge of the work and to direct the employment of such additional force of men, teams, tools and equipment as he may deem requisite and necessary to complete the work in the time specified, to pay all persons so employed and all expenses incurred and to use the tools, teams and equipment of the party of the first part (he being authorized to take possession thereof) and to deduct the amount so paid from any payments then due or thereafter falling due to the Contractor, or in case of failure of the Contractor to prosecute the work as aforesaid, the Chief Engineer may, upon the expiration of ten days after such notice has been served, declare said agreement forfeited and abandoned, which declaration shall absolve the party of the second part from all obligations under or in any wise growing out of this agreement, excepting the obligation to make payments of all amounts then due to the Contractor. In case the Contractor shall fail to complete the said work within the time specified, but shall, nevertheless be permitted to complete the same, such permission shall not release the Contractor from any liability for damages or expenses arising from the non-comple-

tion of the work in the time specified, but such liability shall continue in full force against the Contractor the same as if such permission had never been granted.

Ninth. In the event that the work is materially delayed by the failure of the Engineer to stake out the work promptly, or in securing right of way from any cause for which the party of the second part is responsible, then the time specified herein for the completion of the work shall be extended for a period equal to not less than the aggregate length of time of such stoppage or delays and the Contractor shall have no further claim therefor, or from anything arising from said delays, providing the aggregate thereof is not in excess of thirty days. Such delay and extension shall not release the sureties under this agreement.

Tenth. It is understood and agreed that the party of the second part is to obtain the funds for the payment of the contractor under a contract of even date herewith from the sale of irrigation District Bonds to J. S. and W. S. Kuhn, Incorporated, of Pittsburg, Pennsylvania. In the event that the party of the second part shall be unable to obtain the necessary funds to make said payments or for any reason cannot secure the delivery of the bonds provided for in said contract, the party of the second part shall have the right to stop the work herein contracted for, or any portion thereof, or to diminish the force thereon, and the Contractor shall have no claim for damages by reason thereof. The order to stop said work or

to diminish such force shall be made in writing, signed by the party of the second part and delivered to the contractor on the work, and shall also be sent by registered mail to the contractor's office or last known place of address at least fifteen days before such order shall take effect.

Eleventh. The Contractor shall be subject to the laws of the State of Idaho regarding liens for labor and material furnished for said work, and shall protect and indemnify said party of the second part against all claims and liens against the work for labor or material furnished said Contractor; and before the final settlement is made between said parties for work done and material furnished under this agreement, the Contractor shall furnish satisfactory evidence to the party of the second part that the said dam, canals, aqueducts, flumes, pipe lines, ditches, and other structures and irrigation works are free and clear from all liens for labor, workmanship or material, and that no claim then exists in respect to which such liens could attach.

Twelfth. It is hereby stipulated and agreed that the party of the second part may deduct from each monthly estimate of the party of the first part the engineering charges of the party of the second part incurred on said work from and after the date of this agreement.

Thirteenth. It is further covenanted and agreed that the Contractor shall be responsible for all damages arising from accidents or neglect of the Contractor or its workmen in the Construction of said

irrigation work and system, and that the party of the first part will save the party of the second part harmless by reason of any such damages arising after the execution of this agreement.

Fourteenth. The plans and specifications referred to in this agreement shall be attached hereto on or before the 17th day of April, 1913, and shall be identified by the signatures of the respective Presidents of the parties thereto; said plans and specifications shall provide, inter alia, that all inlets and outlets to main canals, main flumes and main laterals, all bridges and culverts for public highways, the diversion dam at the head of the flume, all headgates for the same and all pressure boxes for the ends of siphons shall be included in this contract, and shall specify that said headgates at diversion dam shall be set in concrete, that there shall be concrete footings under all trestles and concrete pressure boxes at the end of all siphons. This also includes bridges over Weiser River to carry pipe, and that the Chief Engineer of the party of the second part hereto shall have the right to require that all tunnels, or any portions thereof, shall be lined on the bottom and not exceeding three (3) feet up the sides with concrete, if in his judgment the character of the ground is such that the construction will not be safe unless said tunnels or portions thereof be so lined with concrete.

Fifteenth. The Chief Engineer of the party of the second part hereto is hereby constituted the sole arbitrator of all matters in dispute and to deter-

mine the same between the parties hereto in respect to the work done, the classification of material and the materials furnished in the performance of this agreement and his certificate as to any such matter in dispute which may arise between the parties hereto may be final and conclusive between them and no right of action shall exist in favor of the Contractor, or its assigns, excepting for amounts shown to be due unto it until a final certificate of the Chief Engineer is made. Such final certificate shall be made in duplicate, one of which shall be delivered to each of the parties hereto.

Sixteenth. In case Mr. A. J. Wiley shall hereafter cease to act as Chief Engineer as hereinbefore specified, then J. S. and W. S. Kuhn, Incorporated, shall have the right to appoint his successor in office and such successor shall do any and all acts in the place and stead of A. J. Wiley.

Seventeenth. In case contracts are made with sub-contractors, in which a classification basis is used for the purpose of determining the compensation due to such sub-contractor, then all such contracts shall be in writing and a copy thereof filed with the party of the second part, and all such contracts shall contain a clause that the classification made by the engineer in charge, or by the Chief Engineer shall be final and conclusive upon such sub-contractor, and that no payment shall be made to him except in accordance with the classification made by the engineer in charge or by the Chief Engineer.

Eighteenth. In case the Chief Engineer, acting under paragraph eighth of this agreement, shall take charge of said work and employ the necessary forces therefor under the authority given in said paragraph, then his decision as to the necessity of such action shall be final and conclusive upon the parties hereto.

Nineteenth. For the purpose of enabling the engineer of the party of the second part, or the Chief Engineer, to make approximate estimates of the value of the work done or material furnished for the preceding month in order that monthly payments may be made, said estimates shall be made according to progress upon the basis of the following unit prices:

Excavation in earth dam.....	\$0.35 per cu. yd.
Excavation in earth elsewhere....	.15 per cu. yd.
Excavation in loose rock.....	.40 per cu. yd.
Excavation in solid rock.....	1.25 per cu. yd.
Rip-rap	2.00 per cu. yd.
Core wall	11.00 per cu. yd.
Tunnels.....	6.00 per lineal ft.
44-inch pipe.....	3.50 per lineal ft.
48-inch pipe.....	3.50 per lineal ft.
66-inch pipe.....	6.00 per lineal ft.
24-inch pipe.....	1.25 per lineal ft.
20-inch pipe.....	1.25 per lineal ft.
Lumber.....	30.00 per 1000 bd. ft.

Twentieth. The party of the second part shall have the right to make such changes in the amount, dimensions or character of the work to be done, or

materials to be furnished, as in the opinion of the Chief Engineer, the interests of said work or of the said party of the second part may require, such changes, however, to be those which, in the opinion of the Chief Engineer, are called for in order to provide good construction and an efficient irrigation system, but the lump sum hereinbefore provided shall be a full payment for all work done of every kind and character under the terms of this contract.

Twenty-first. This agreement on the part of the contractor to construct the works for the lump sum herein specified is made for the use and benefit of J. S. and W. S. Kuhn, Incorporated (a corporation), the purchaser of the bonds, as well as for the benefit of second party, and may be enforced by said corporation in its own name and on its own behalf if desired.

Twenty-second. The party of the first part shall on or before the 21st day of April, 1913, and before commencing the work contemplated in this agreement, furnish the party of the second part with a surety bond executed by a Surety Company satisfactory to the party of the first part hereto in the penal sum of One Hundred Thousand (\$100,000) Dollars, conditioned for the faithful performance of all the agreements, covenants and conditions of this agreement.

In Witness Whereof, the respective parties have caused their corporate names to be hereunto subscribed and these presents to be executed by their respective Presidents, duly attested by their respec-

tive Secretaries, and sealed with their corporate seals, all on the day and year in this agreement as above written.

SLICK BROTHERS CONSTRUCTION
COMPANY, Ltd.,

By W. B. Slick, President.

Attest: Frank B. Cross, Secretary.

CRANE CREEK IRRIGATION
LAND & POWER CO.,

By E. D. Ford, President.

Attest: E. P. Hall, Secretary.

Endorsed: Filed March 25, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

PLAINTIFF'S EXHIBIT NO. 39.

Supplemental Agreement.

This Supplemental Agreement, made and entered into this 8th day of November, A. D. 1913, by and between Slick Brothers Construction Company, Limited, a corporation organized and existing under and by virtue of the laws of the State of Idaho (hereinafter called the "Contractor"), the party of the first part, and Crane Creek Irrigation Land & Power Company, a corporation organized and existing under the laws of the State of Idaho (hereinafter called the "Company"), the party of the second part, witnesseth: That,

Whereas, the parties hereto did heretofore enter into a certain contract and agreement bearing date the 2nd day of April, A. D. 1913, wherein and whereby the Contractor agreed to construct for the Com-

pany certain canals, dams, aqueducts, ditches, pipe lines, tunnels, flumes and other structures and irrigation works, to which said contract reference is hereby made for a more particular description of the works to be constructed thereunder and the terms and conditions thereof; and,

Whereas, the parties hereto did thereafter and on the said 2nd day of April, A. D. 1913, enter into a certain other agreement designated a Supplemental Agreement relative to the work to be done and the consideration to be paid under the agreement first hereinbefore mentioned; and thereafter the parties hereto did enter into a certain other agreement, bearing date the 22nd day of October, 1913, modifying and supplementing the contracts and agreements hereinbefore mentioned; and,

Whereas, the parties hereto have mutually agreed to cancel and annul the said supplemental agreement dated the 2nd day of April, A. D. 1913, and the said agreement dated October 22nd, 1913, and to make certain changes and modifications in said agreement first hereinbefore mentioned, bearing date the 2nd day of April, A. D. 1913.

Now, Therefore, in consideration of the premises and the mutual covenants herein contained, the parties hereto have agreed and hereby do agree as follows, to-wit:

First. The said agreement designated as a Supplemental Agreement and bearing date the 2nd day of April, A. D. 1913, and the said agreement bearing date the 22nd day of October, 1913, between the

parties hereto are and each of them is hereby canceled, annulled and set aside and of no further force or effect.

Second. The said contract or agreement first hereinbefore mentioned bearing date the 2nd day of April, A. D. 1913, shall remain and continue in full force and effect, save and except as the same is hereinafter modified, supplemented or changed.

Third. The approximate estimates of the value of the work done or material furnished by the Contractor, to be made monthly as provided in the sixth paragraph of the said contract or agreement of April 2, 1913, shall be based upon the classifications of work to be done and performed and of material to be furnished and prices set forth in the revised schedule hereto attached, marked Exhibit "A" and made a part hereof; and the classifications and unit prices set forth in the nineteenth paragraph of the said agreement of April 2nd, A. D. 1913, are hereby canceled and annulled, and the same shall be of no further force or effect, but the same are superseded by the classifications and prices contained in the said schedule hereto attached and marked Exhibit "A."

Fourth. In view of the fact that J. S. and W. S. Kuhn, Incorporated, of Pittsburg, Pennsylvania, have no longer any interest in the said contract of April 2nd, A. D. 1913, or in the work to be performed hereunder or under said contract, the Tenth, Sixteenth and Twenty-first paragraphs of the said contract of April 2, 1913, are hereby canceled and annulled, and the terms and provisions in said para-

graphs, or either of them, contained shall be of no further force or effect or binding upon either of the parties hereto.

Fifth. All work to be done and performed and all material to be furnished or structures to be constructed by the Contractor for the Company shall be in accordance with the plans and specifications attached to and made a part of the said contract of April 2nd, A. D. 1913, as the same are modified, changed or amended by the supplemental specifications hereto attached, marked Exhibit "B" and made a part hereof.

Sixth. It is mutually agreed that the work to be done and materials to be furnished by the Contractor under what is known as Classes 1, 2 and 3 in said schedule, Exhibit "A," the same being earth, loose rock, and solid rock, shall be done and performed without regard to quantities or classification for the total or lump sum of One Hundred Twenty-nine Thousand One Hundred Fifty-one Dollars (\$129,-151), which shall be in full payment for the earth, loose rock and solid rock specified in said schedule "A;" this, however, not to include payment for any work done or to be done on what is known as the "Reservoir Dam" or "Reservoir," and the prices for such work set forth in such schedule shall be used only for the purpose of making monthly or approximate estimates prior to the completion of such work; provided, that the structures and ditches required shall be built according to the survey heretofore made and as the same are now located and

staked out on the ground. The remainder of the work specified in said schedule "A" shall be performed and the materials furnished by the Contractor at the prices set forth in such schedule; and in the event the amount of work done and materials furnished exceeds the estimates set forth in said schedule "A" for such work or material, the Company shall pay for such excess at the rate specified in said schedule "A;" and in the event the amount of work to be done and materials furnished by the Contractor, other than the earth, loose rock and solid rock above referred to and to be done and performed at the lump sum hereinbefore stated, is less than the estimates set forth in said schedule "A" there shall be deducted from the said price of Three Hundred Fifty-four Thousand Dollars (\$354,000) to be paid the Contractor the difference between the estimates of such work contained in said schedule "A" and the work actually done and materials actually furnished, such deductions to be made at the rate specified in said schedule.

Seventh. That the total consideration to be received by the Contractor for doing the work specified in said schedule "A" is Three Hundred Fifty-four Thousand Dollars (\$354,000), subject to be increased or decreased as provided in the Sixth paragraph hereof; and in consideration of the fact that the Contractor has reduced the price for such work and material from Three Hundred Seventy Thousand Dollars (\$370,000) to Three Hundred Fifty-four Thousand Dollars (\$354,000), the Company

shall and it hereby does agree to pay all engineering charges and expenses of whatsoever kind incurred in connection with the doing of the work and the construction of the structures to be done, performed and constructed by the Contractor under said agreement of April 2nd, 1913, as hereby modified, supplemented and changed, including all engineering charges and expenses incurred prior to the date of this supplemental agreement; and the Twelfth paragraph of the said contract of April 2, 1913, is hereby canceled and annulled. But the Contractor shall not be entitled to any reimbursement or payment for any board or team hire furnished the engineers heretofore.

Eighth. That all work required to be done hereunder, except what pertains to what is known as the "Reservoir Dam," shall be completed on or before the 15th day of April, 1914, and said "Reservoir Dam" shall be completed not later than December 1st, 1914, to the extent contemplated by said schedule, Exhibit "A;" provided, that if the irrigation districts interested in said works mentioned in the said contract of April 2nd, 1913, consent to any extension of time in which to do any of the work to be done hereunder, the Contractor shall be entitled to the benefit of such extension or extensions.

Ninth. It is mutually agreed that A. J. Wiley, of Boise, Idaho, shall continue as the Chief Engineer of the Company, with all the power and authority vested in him or in the Chief Engineer under the said contract of April 2, 1913.

Tenth. Upon the completion of the work to be performed by the Contractor hereunder, except what is included in what is known as the "Reservoir Dam," a final settlement shall be had as to such work within the time and in the manner provided in the Sixth paragraph of the said agreement of April 2, 1913, as hereinbefore modified and amended, and upon the completion of the said "Reservoir Dam" the final settlement as to such work shall likewise be had. Provided, however, that if the consent of the said irrigation districts can be obtained thereto, the making of such final estimates and payment therefor shall be made within such shorter period than sixty days as the said irrigation districts may consent to.

Eleventh. All work to be performed by the Contractor for the Company shall be accepted from time to time as the work is done or performed or structures built, so as to enable the Contractor to make any changes therein that may be required before moving the outfit engaged in such work to some other point or place on the works.

Twelfth. The Company will pay the Contractor the sum of Thirty Thousand Dollars (\$30,000.00) at once on account of estimates heretofore made and given upon work performed prior to November 1, A. D. 1913, and the further sum of Twenty Thousand Dollars (\$20,000.00) on or before the 15th day of November, A. D. 1913, to be paid on account regardless of the amount of any estimates due the Contractor on account of said work, and to be ap-

plied upon contract price of said work. All future estimates and payments to be made in accordance with the provisions of said original contract, dated April 2, A. D. 1913, and the same is herein amended and modified.

Thirteenth. All materials to be furnished by the Contractor shall be accepted by the Company, or its engineers, f. o. b. cars or at the railroad siding or yards where the same may be unloaded for use in such works, and the same shall be included in the estimates for the month in which such material arrived at such railroad station, siding or point of unloading.

Fourteenth. The Company shall on or before the 29th day of November, 1913, furnish evidence satisfactory to the Contractor that the money required to pay for the work and material to be done or furnished by the Contractor hereunder is available for such payment.

Fifteenth. The parties hereto mutually release each other from all claim or right to damages on account of any matters in or growing out of said original contract, dated April 2, A. D. 1913, and the agreement supplemental thereto, dated April 2, 1913, and the supplemental agreement of October 22, A. D. 1913, of every kind and character, which either may have against the other at this date, or for or on account of any action or cause of action which may have accrued prior to the date hereof.

Sixteenth. It is hereby agreed that the Contractor shall obtain the acceptance of this supplemental

agreement by The Aetna Accident and Liability Company of Hartford, Connecticut, the surety on its bond to the party of the second part, before the same shall be in force or have effect.

In Witness Whereof, the parties hereto, by authority of their respective Boards of Directors, have caused their corporate names to be hereto subscribed by their respective officers, and their corporate seals to be hereto affixed, in duplicate, the day and year first above written.

SLICK BROTHERS CONSTRUCTION
COMPANY, Ltd.,

By W. B. Slick, its President.

Attest: Frank B. Cross, its Secretary.

CRANE CREEK IRRIGATION
LAND & POWER CO.,

By E. D. Ford, its President.

Attest: Nellie Saylor, its Secretary.

Endorsed: Filed March 25, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

SUNNYSIDE EXHIBIT "S."

This Contract, made and entered into in triplicate this the 19th day of April, 1913, by and between Crane Creek Irrigation, Land and Power Company, hereinafter called the Company, party of the first part, and Crane Creek Irrigation District, the party of the second part, and Sunnyside Irrigation District, the party of the third part, witnesseth:

Whereas, on August 22, 1910, the Company and

the party of the second part entered into a written contract for the sale and construction by the company and delivery to the party of the second part, of an irrigation system as in said contract specifically set forth, which contract is hereby referred to and made a part hereof,

And Whereas, by a contract of the same date, the Company, as party of the first part, entered into a similar contract with Sunnyside Irrigation District as second party thereto, for the construction of an irrigation system for said Sunnyside Irrigation District, which contract was in writing and is hereby referred to and made a part hereof,

And Whereas, the reservoir, water rights, main canals, etc., of the system to be built and furnished to Sunnyside Irrigation District and to Crane Creek Irrigation District are identical, each irrigation district getting an interest in and to said common water right, reservoir, main canal, etc.

And Whereas, the interest of the two irrigation districts are identical in all respects, save and except for the construction and completion of the distribution system for the distribution of water inside of each irrigation district wherein so far as said distribution system is concerned, neither district has an interest in the distribution system of the other.

And Whereas, paragraph XXVII. of each of said contracts between the Company and Sunnyside Irrigation District and Crane Creek Irrigation District, is identical save and except that the amount of bond to be delivered in the contract with the Crane

Creek Irrigation District is to be the sum of \$75,000, \$30,000 of which it is therein provided shall be by a surety company and \$40,000 by individuals, to be approved by the district; and in the contract with the Sunnyside Irrigation District, the amount of such bond is \$100,000, \$50,000 of which shall be of a surety company, and \$50,000 by individuals.

And Whereas bonding companies will not write such a bond as that, when a part of the surety is to be furnished by a bonding company and a part by individuals, covering the same work,

Now, Therefore, it is mutually agreed by and between the parties hereto that the Company in lieu of said bonds called for by said paragraph XXVII. of said contracts made with Sunnyside Irrigation District and Crane Creek Irrigation District, shall execute good and substantial bond in the sum of \$100,000, which bond shall be given by a surety company doing business in the State of Idaho, to the Crane Creek Irrigation District and the Sunnyside Irrigation District, jointly conditioned for the faithful performance of all the terms and conditions of each of said contracts dated August 22, 1910, between said Company and said Crane Creek Irrigation District and Sunnyside Irrigation District, which contracts are herein referred to and made a part hereof, in said contracts provided to be kept and performed by the said company for the construction of the irrigation works covered by said agreements and contracts in accordance with the plans and specifications in said contracts mentioned, and the com-

pletion and conveyance within the time herein stated, as supplemented by contract of this date as to time, and for the maintenance of said system for the period of five (5) years pursuant to the conditions of said contract dated August 22, 1910.

It being mutually agreed by and between the parties hereto that said joint surety bond shall take the place of and be in lieu of said bonds called for by said paragraph XXVII. of said two contracts aforesaid, and it is further mutually agreed that both the Sunnyside Irrigation District and the Crane Creek Irrigation District shall have the right of action against said bonding company for the failure on the part of the Company to perform all or any of the terms and conditions in said contracts set forth to be performed by said Crane Creek Irrigation Land and Power Company, and that said bond shall so provide.

It being further mutually understood and agreed that said bond shall be in such form as shall meet with the intendments of this supplemental agreement, and shall be in such form also as to meet with the approval of the Board of Directors and of Ed R. Coulter, the attorney for both the Crane Creek Irrigation District and the Sunnyside Irrigation District and shall be by him approved.

It is further mutually understood and agreed that this supplemental agreement shall not affect any of the terms and conditions of said two contracts dated August 22, 1910, save and except said paragraph

XXVII. of each of said contracts, and all the terms and conditions of said contract of August 22, 1910, with the exception of said paragraph XXVII. as herein amended shall be and continue in full force and effect, the intendments of this contract being only to vary the terms, amount and conditions of said bond.

It is intended that this contract shall be mutually binding upon and by and between each and every and all of the parties hereto.

In Witness Whereof, The respective parties hereto have caused their corporate names to be hereunto subscribed by their respective Presidents, sealed with their corporate seals and duly attested by their respective Secretaries, this the day and year first above written, pursuant to authority duly granted by resolution of their respective Boards of Directors.

CRANE CREEK IRRIGATION

LAND AND POWER CO.,

By E. D. Ford, its President.

Attest: E. P. Hall, Secretary.

CRANE CREEK IRRIGATION DISTRICT,

By Chas. C. Cleary, its President.

Attest: Daisy Dasch, Secretary.

SUNNYSIDE IRRIGATION DISTRICT,

By O. M. Harvey, its President.

Attest: Ed R. Coulter, Secretary.

Endorsed: Filed March 30, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

SUNNYSIDE EXHIBIT "P."

This Agreement made and entered into this the 19th day of April, 1913, by and between Sunnyside Irrigation District, a municipal corporation of Washington County, Idaho, party of the first part, and Crane Creek Irrigation Land and Power Company, a corporation organized and existing under the laws of the State of Idaho, the party of the second part, witnesseth:

Whereas There is now existing between the parties hereto a certain contract, dated August 22, 1910, for the erection, construction and completion of a certain dam, reservoir and irrigation works known as the Crane Creek reservoir and irrigation works, and for the conveyance by the party of the second part to the party of the first part of the certain portions or interest in said dam, reservoir and system, and

Whereas, Article Six of said contract provides among other things that said dam shall be completed so as to empound 50,000 acre feet of water in the reservoir by not later than the 22nd day of August, 1911, and that the entire proposed irrigation system shall be completed not later than the 1st day of May, 1912, and

Whereas, by a supplemental agreement made and entered into on the 3rd day of October, 1911, the party of the first part extended the time for the completion of the dam mentioned in said paragraph Six of said contract dated August 22, 1910, from the 22nd day of August, 1911, to the 1st day of Septem-

ber, 1913, and extended the time for the completion of the works mentioned in said contract from the 1st day of May, 1912, as set forth in said Paragraph Six of said contract, to the first day of September, 1913, and

Whereas, At this time, the party of the second part is desirous of further extension of time for the completion of said dam and irrigation works, and

Whereas, The dam and reservoir called for by said contract of August 22, 1910, has already been partially completed by the party of the second part, and to the extent that the same will now and does em-pound the sum of 35,000 acre feet of water,

Now Therefore, in consideration of the sum of One Dollar (\$1.00) to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and of other consid-erations hereinafter set forth, it is agreed by and be-tween the parties hereto as follows, to-wit:

That the party of the first part hereby extends the time for the completion of the dam mentioned in paragraph Six of said contract dated August 22, 1910, from September 1, 1913, to April 15, 1914, and hereby extends the time for the completion of the works mentioned in said paragraph of said contract of August 22, 1910, from the first day of September, 1913, to and until the fifteenth day of April, 1914.

Party of the second part, in consideration of the extension of time aforesaid, hereby agrees that it will forthwith and at once commence work upon the dam

and complete the same to the requirements of said Paragraph Six of said contract of August 22, 1910, on or before the 15th day of April, 1914.

And the party of the second part, for and in consideration of said extension of time as aforesaid, does further contract and agree that in the event said reservoir, dams and irrigation system shall not be completed and ready to deliver to the party of the first part as called for in paragraph Six of said contract, as amended by said contract of October 3, 1911, and this contract, on or before the 15th day of April, 1914, party of the second part will reimburse party of the first part for the interest on all bonds of the District delivered by the District to the Company for the time from the date of the issuance of said bonds until the first day of January, 1915, and also agrees to advance and pay to the district, the interest due on July first on said bonds for the first irrigation season thereafter, said district to repay said advancement to the Company on the first day of January following.

Paragraph XVII. of the construction agreement dated August 22, 1910, as modified, is hereby further modified in the following extent: The district will not require the company to pay any interest on any bonds delivered to it, after January 1, 1914, provided the irrigation system is completed and ready to deliver to the district on or before April 15, 1914, except as provided for in this agreement.

That said contract of August 22, 1910, shall in all other particulars be and remain in full force and ef-

fect and that the bonds called for by said contract shall be executed and delivered by party of the second part to party of the first part hereto to cover this contract as well as said contract dated the 22nd day of August, 1910.

In Witness Whereof, the party of the first part hereto has caused this contract to be executed by the Chairman of its Board of Commissioners, attested by its Secretary and sealed with its corporate seal, being thereunto duly authorized by a resolution of its Board of Directors, duly passed on this day, and the party of the second part has caused these presents to be executed by its President, sealed with its corporate seal and attested by its Secretary, being thereunto duly authorized by a resolution of its Board of Directors, duly passed this, all on the day and year first above written.

SUNNYSIDE IRRIGATION DISTRICT,

By O. M. Harvey, its President.

Attest: Ed. R. Coulter, Secretary.

CRANE CREEK IRRIGATION LAND

& POWER CO.,

By E. D. Ford, its President.

Attest: E. P. Hall, Secretary.

Endorsed: Filed March 30, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

DEFENDANT SUNNYSIDE & CRANE CREEK
IRRIGATION DISTRICT EXHIBIT "M."

This Agreement, Made and entered into this the 3rd day of October, 1911, in duplicate, by and be-

tween the Sunnyside Irrigation District, municipal corporation within Washington County, State of Idaho, and party of the first part, and the Crane Creek Irrigation Land & Power Company, a corporation, organized and existing under the laws of the State of Idaho, the party of the second part, witnesseth:

That, whereas, there is now existing between the parties hereto a contract in writing, dated the 22nd day of August, 1910, for the erection, construction and completion of a certain dam, reservoir and irrigation works known as the Crane Creek Dam, Reservoir and Irrigation Works, and for the conveyance by the party of the second part to the party of the first part of certain portions or interests in said dam, reservoir and system; and,

Whereas, Article VI. of said contract provides, among other things, that said dam shall be completed so as to store 50,000 acre feet of water in the reservoir by not later than the 22nd day of August, 1911, and that the entire proposed irrigation systems shall be completed by the last day of May, 1912, and,

Now, Therefore, in consideration of the sum of one dollar to the party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, and other considerations hereinafter set forth, it is agreed by and between the parties hereto as follows, to-wit:

That the party of the first part hereby extends the time for the completion of the dam mentioned in paragraph VI. of said contract dated August 22nd,

1910, from the 22nd day of August, 1911, to the 1st day of September, 1913, and hereby extends the time for the completion of the works mentioned in said contract, from the first day of May, 1912, as set forth in said paragraph VI. of said contract aforesaid, to and until the 1st day of September, 1913.

The party of the second part, in consideration of the extensions of time aforesaid, hereby agrees that it will forthwith and as soon as possible, commence work upon the dam and complete a portion of the same, building to the height of forty-four feet, before the 31st day of December, 1911, the elements and weather permitting.

The party of the second part, for and in consideration of said extensions aforesaid, hereby contracts and agrees that in the event said reservoir, dam and irrigation system shall not be completed and ready for delivery to and is accepted by the party of the first part as called for by paragraphs VI. and 23 of said contract as amended by this contract, on or before the 15th day of May, 1913, the party of the second part agrees to reimburse the party of the first part for the interest on all bonds of the district delivered by the district to the Company, for the time from the date of issuance of said bonds until the 1st day of January, 1914, and also agrees to advance and pay for the district the interest due July 1st on said bonds for the first irrigation season thereafter, the district to repay said advancements to the Company on the 1st day of January following; and that the provisions of paragraph XVII. of said contract

aforesaid, shall remain in full force and effect except as herein changed.

That said contract of August 22nd, 1910, shall in all other particulars be and remain in full force and effect, and that the bonds called for by said contract, to be executed and delivered by the second party to the first party hereto, shall cover this contract as well as said contract of August 22nd, 1910.

In Witness Whereof, the party of the first part has caused these presents to be executed by the Chairman of its Board of Directors, attested by its Secretary and sealed with its corporate seal, being thereunto duly authorized by a resolution of its Board of Directors duly passed on this day, and the party of the second part has caused these presents to be executed by its President, sealed with its corporate seal and attested by its Secretary, being thereunto duly authorized by resolution of its Board of Directors duly passed, all on the day and year first above written.

SUNNYSIDE IRRIGATION DISTRICT,

By O. M. Harvey, its President.

Witnessed by John H. Norus, J. F. Clabby.

Attest: A. D. Redford, Secretary.

CRANE CREEK IRRIGATION LAND

& POWER CO.,

By E. D. Ford, its President.

Attest: E. P. Hall, Secretary.

Endorsed: Filed March 30, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

DEFENDANT SUNNYSIDE & CRANE CREEK
IRRIGATION DISTRICT EXHIBIT NO. "C."

This Agreement, made and entered into, in duplicate, this 22nd day of August, 1910, by and between the Crane Creek Irrigation Land and Power Company, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business at Weiser, Washington County, Idaho (hereinafter called the "Company"), party of the first part, and the Sunnyside Irrigation District, a corporation duly organized, existing and doing business under and by virtue of the laws of the State of Idaho, with its principal place of business in said district, in Washington County, State of Idaho (hereinafter called the "District"), the party of the second part.

Witnesseth: Whereas, the Company and the District have this day entered into a written contract for the purchase by the District from the Company of an irrigation system and interest in an irrigation system now owned and being constructed, and to be constructed by the Company, according to certain plans and specifications therefor, attached to and made a part of said contract, which contract and the plans and specifications therefor and thereunto attached, are hereby referred to made a part hereof.

Now, Therefore, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, to be kept, done and performed by the parties hereto, the Company hereby contracts and agrees to and with the District to maintain and oper-

ate said irrigation system, making all repairs that may be necessary to keep such system in condition for efficient use, including that portion embraced within the boundaries of the District, and including the distribution of water into the laterals of the consumers in accordance with the By-laws and Regulations of the District hereafter to be formed and adopted, relative to such distribution, and including the undivided interest of the District in that portion of said system lying outside of the boundaries of the District, for the period of five (5) years, from and after its completion, acceptance and conveyance to the District; and to deliver over said irrigation system at the end of said five (5) year period in the condition which the plans and specifications therefor require said irrigation system to be in, at the time of its completion and acceptance by the District, except ordinary use and wear thereof.

And in consideration of said services the District hereby agrees to pay the Company the sum of one dollar (\$1.00) per acre, per year, during said five (5) years period, for all the lands in said District against which are assessed the benefits of said system; said payments to be made annually upon the first Tuesday in January each year following such services.

It is further agreed that, in consideration of said payments so to be made by the District to the Company, as aforesaid, that the Company is to execute and deliver to the District good and substantial bonds, with sureties to be approved by the District,

in the sum of Fifty Thousand Dollars (\$50,000.00) conditioned for the faithful performance of all of the terms of this agreement by the Company to be kept and performed.

It is further agreed that in the event the Company gives a personal bond to the District for said obligation, or any part thereof, and the same is accepted by the District, the District reserves the right to require additional surety on said bond, or a new bond in lieu thereof, at any time that it may deem said undertaking insufficient on account of the sureties thereon becoming irresponsible for the several amounts for which they may have obligated themselves.

In Witness Whereof, the respective parties have caused these presents to be executed in duplicate by their respective Presidents, signed by their corporate names, sealed with their corporate seals, all on the day and year first above written, being thereunto duly authorized by resolutions by the respective Boards of Directors of the parties, duly passed on the 22nd day of August, 1910.

CRANE CREEK IRRIGATION LAND
& POWER CO.,

By E. D. Ford, President.

Attest: E. P. Hall, Secretary.

SUNNYSIDE IRRIGATION DISTRICT,

By O. M. Harvey, President.

Attest: A. D. Redford, Secretary.

Endorsed: Filed March 30, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

Warranty Deed, dated May 29, 1913, between Crane Creek Irrigation Land & Power Co., and Sunnyside Irrigation District. Consideration, \$151,000.00. For the following described property:

An undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to that certain permit number 1720, issued by the State Engineer of the State of Idaho, under date of December 16th, 1905, to one Edwin D. Ford, and recorded in Book 6 at page 1720 of the record in said State Engineer's office at Boise, Idaho, and those certain permits issued by said State Engineer to Edwin D. Ford and numbered 6830 and 6834 respectively, and heretofore conveyed to the company together with a like proportion of all the water thereby appropriated and all rights acquired under said permits; also forty-seven and two-tenths per cent. (47.2%) of the right of all flowage through the Northwest Quarter of the Northeast Quarter and the North Half of the Northwest Quarter of Section 19, Township 12 North, of Range 2 West of Boise Meridian in Idaho; and also forty-seven and two-tenths per cent. (47.2%) of the right of flowage through the Northeast Quarter of Section 24, in Township 12 North, of Range 3 West of Boise Meridian in Idaho, heretofore conveyed to the Company, to Grantor by Edwin D. and Hortense A. Ford, under date of May 9, 1910.

An undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to, all and singular, such right of way for canals, flumes and laterals as may be used in common by the Grantor and Grantee here-

in, and the Crane Creek Irrigation District acquired by the Grantor by purchase or by filing maps thereof as required by the regulations of the general land office of the United States and the acts of Congress in relation thereto, including an undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to said reservoir site, described in the certain indenture dated May 9th, 1910, between Edwin D. and Hortense A. Ford and the Grantor herein, which said indenture is of record in Book 26 of Deeds at page 413 of the records in the office of the County Recorder of Washington County, Idaho.

An undivided forty-seven and two-tenths per cent. (47.2%) interest of, in and to all completed portions of all canals, pipe lines, flumes and aqueducts situated wholly within the boundaries of said irrigation district and as shown upon the plat attached to that certain contract in writing between the parties hereto, dated the 22nd day of August, 1910.

All and singular, the completed portion of all main canals, distributing laterals, pipe lines, and flumes situate wholly within the boundaries of said irrigation district, and the same appear upon the plat above referred to, including rights of way for the same.

Hereby reserving unto party of the first part the sole right to use and enjoy all waters stored in said reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the second part the exclusive right to use the water impounded in said reservoir, including the

water hereby conveyed to party of the second part for the purpose of developing power provided the same shall not thereby be diminished in quantity or quality.

It is covenanted and agreed that this conveyance, when all the work contemplated in that agreement between the parties hereto, dated August 22nd, 1910, and the extensions and amendments thereof shall have been fully completed and performed, which said dinal conveyance shall contain particular and accurate descriptions including the courses and distances of rights of way for canals, and the canals, dams and other works, and a detail description of the reservoir site.

Warranty Deed, dated June 12th, 1913, between Crane Creek Irrigation Land & Power Co., and Sunnyside Irrigation District. Consideration, \$21,400.-00. For the following described property:

All the completed portion of the Sunnyside lateral from station 0+00 to station 800, subject to the prior right of the Sunnyside Ditch Company, Limited, in and to said lateral from station 0+00 to station 471 according to the survey of Z. N. Vaughn and as now staked upon the ground.

Also forty-seven and two-tenths per cent. (47.2%) interest in and to the completed portion of the main canal of the party of the first part between stations 150 and 350 of the survey thereof by Z. N. Vaughn as staked upon the ground.

Hereby reserving unto party of the first part the perpetual right to carry water through said lateral for itself, customers and assigns in accordance with the contract dated August 22, 1910, between the parties hereto.

Hereby reserving unto party of the first part the sole right to use and enjoy all waters stored in said reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water hereby conveyed to party of the second part for the purpose of developing power provided the same shall not thereby be diminished in quantity or quality.

It is covenanted and agreed that this conveyance, when all the work completed in that agreement between the parties hereto, dated August 22nd, 1910, and the extensions and amendments thereof shall have been fully completed and performed, which said final conveyance shall contain particular and accurate descriptions including the courses and distances of rights of way for canals, and the canals, dams and other works, and a detail description of the reservoir site.

Warranty Deed, dated September 1, 1913, between the Crane Creek Irrigation Land & Power Co., and Sunnyside Irrigation District. Consideration, \$77,-200.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 162+00 to 502+00 and 670+00 to 740+00 and 740+00 to 912+00 and between stations. to stations. on the Sunnyside lateral and between stations 0+00 to 109+80 east and from stations 0+00 to 782+40 west in the low line lateral, of the irrigation works of the party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also, reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22nd, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto dated August 22nd, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those two

certain conveyances dated May 29th, 1913, and June 12th, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated November 1, 1913, between Crane Creek Irrigation Land & Power Co., and Sunnyside Irrigation District. Consideration, \$38,300.-00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of the party of the first part between stations 93+00 to 502+00, 679+00 to 812+00, and 829+00 to 904+00; the entire Sunnyside lateral; and between stations 0+00 to 189+00 east and from stations 0+00 to 550+00 west in the low line lateral, and between stations 251+00 to 622+00, 698+00 to 730+00, 770+00 to 913+00 and 1232+00 to 1332+00 of the high line lateral, of the irrigation works of party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also, reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22nd, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto dated August 22nd, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those three certain conveyances dated May 29th, 1913, June 12th, 1913, and September 1st, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other work and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part

by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein.

This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portion of the works hereby conveyed.

Warranty Deed, dated December 1, 1913, between Crane Creek Irrigation Land & Power Company, and Sunnyside Irrigation District. Consideration, \$19,-963.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 93+00 to 502+00, 679+00 to 812+00, and 829+00 to 904+00; the entire Sunnyside lateral; and between stations 0+00 to 189+00 east and from stations 0+00 to 550+00 west in the low line lateral, and between stations 251+00 to 622+00, 698+00 to 730+00, 770+00 to 913+00 and 1232+00 to 1332+00 of the high line lateral, of the irrigation works of party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also, reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of

the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22nd, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22nd, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those four certain conveyances dated May 29th, 1913, June 12th, 1913, September 1st, 1913, and November 1st, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated January 2, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$27,842.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 782+40 west in the low line lateral, and between stations 0+00 to 110+00 east, and stations 0+00 to 532+00, 547+00 to 1048+00, 1176+00 to 1188+00 and 1232+50 to 1358+75 of the high line lateral, of the irrigation works of party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred and seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir, including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22nd, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this con-

veyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22nd, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those five certain conveyances dated May 29th, 1913, June 12th, 1913, September 1st, 1913, November 1st, 1913, and December 1st, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated February 2, 1914, between Crane Creek Irrigation Land & Power Company and Sunnyside Irrigation District. Consideration, \$12,-963. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion

of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 550+00 west in the low line lateral, and between stations 0+00 to 540+75, 547+00 to 109+00, 1174+00 to 1192+00, and 1226+85 to 1358+75 of the high line lateral, of the irrigation works of party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir, including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22nd, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those six

certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, and January 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated March 2, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$31,235.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 550+00 west in the low line lateral, and between stations 0+00 to 540+75, 547+00 to 1091+00, 1174+00 to

1192+00, and 1226+85 to 1231+93 of the high line lateral, of the irrigation works of the party of the first part.

Hereby reserving unto the party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto the party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended, by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those seven certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, and February 2, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular

and accurate descriptions, including courses and distance of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated April 1, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$69,390.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 550+00 west, in the low line lateral, and between stations 0+00 to 540+75, 547+00 to 1091+00, 1174+00 to 1192+00, and 1226+85 to 1231+93 of the high line lateral, of the irrigation works of party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy

thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those eight certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, and March 2, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial convey-

ances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed dated May 1, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$33,335.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 550+00 west, in the low line lateral, and between stations 0+00 to 540+75, 547+00 to 1091+00, 1174+00 to 1192+00, and 1226+85 to 1231+93 of the high line lateral, of the irrigation works of party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or elec-

tricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those nine certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, and April 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record, by party of the second part, until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated June 1, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$49,100.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 550+00 west in the low line lateral, and between stations 0+00 to 540+75, 547+00 to 1091+00, 1174+00 to 1192+00, and 1226+85 to 1231+93 of the high line lateral, of the irrigation works of the party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part, for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation, together with those ten certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, April 1, 1914, and May 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated July 1, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$7,000.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 46+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and between stations 0+00 to 110+00 east and from stations 0+00 to 550+00 west in the low line lateral, and between stations 0+00 to 540+75, 547+00 to 1091+00, 1174+00 to 1192+00, and 1226+85 to 1231+93 of the high line lateral, of the irrigation works of the party of the first part.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part, for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract, dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and

performed, shall be delivered up to the party of the first part for cancellation, together with those eleven certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, April 1, 1914, May 1, 1914, and June 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated August 15, 1914, between Crane Creek Irrigation Land and Power Company and Sunnyside Irrigation District. Consideration, \$10,346.00. For the following described property:

An undivided forty-seven and two-tenths (47.2%) per cent. interest of, in and to the completed portion of the main canal of party of the first part between stations 37+00 to 502+00, 679+00 to 812+00 and 829+00 to 904+00; and the entire high line lateral,

and the low line lateral, as they are built both easterly and westerly from the Cove Creek siphon.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use of all the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part, for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract, dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation, together with those twelve certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, April 1, 1914, May 1, 1914, June 1, 1914, and July 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery

of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works, and a detailed description of the reservoir site known as the Crane Creek Reservoir shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated May 29, 1913, from Crane Creek Irrigation Land & Power Company and Crane Creek Irrigation District. Consideration, \$99,000.-00. For the following described property:

An undivided twenty-two and four-tenths per cent. (22.4%) interest of, in and to that certain permit numbered 1720, issued by the State Engineer of the State of Idaho, under date of December 16, 1905, to one Edwin D. Ford, and recorded in Book 6 at page 1720 of the record in said State Engineer's office at Boise, Idaho, and those certain permits issued by said State Engineer to Edwin D. Ford and numbered 6830 and 6834 respectively, and heretofore conveyed to the company together with a like proportion of all the water thereby appropriated and all rights acquired under said permits; also twenty-two and four-tenths per cent. (22.4%) of the right

of all flowage through the Northwest Quarter of the Northeast Quarter and the North Half of the Northwest Quarter of Section 19, Township 12 North, of Range 2 West of Boise Meridian in Idaho; and also twenty-two and four-tenths per cent. (22.4%) of the right of flowage through the Northeast Quarter of Section 24, in Township 12 North, of Range 3 West of Boise Meridian in Idaho, heretofore conveyed to the Company to Grantor by Edwin D. and Hortense A. Ford, under date of May 9, 1910.

An undivided twenty-two and four-tenths per cent. (22.4%) interest of, in and to, all and singular, such right of way for canals, flumes and laterals as may be used in common by the Grantor and Grantee herein, and the Sunnyside Irrigation District acquired by the Grantor by purchase or by filing maps thereof as required by the regulations of the general land office of the United States and the acts of Congress in relation thereto, including an undivided twenty-two and four-tenths per cent. (22.4%) interest of, in and to said reservoir site, described in the certain indenture, dated May 9, 1910, between Edwin D. and Hortense A. Ford and the Grantor herein, which said indenture is of record in Book 26 of Deeds at page 413 of the records in the office of the County Recorder of Washington County, Idaho.

An undivided twenty-two and four-tenths per cent. (22.4%) interest of, in and to all completed portions of all canals, pipe lines, flumes and aqueducts situated wholly within the boundaries of said irrigation district and as shown upon the plat at-

tached to that certain contract in writing between the parties hereto, dated the 22nd day of August, 1910.

All and singular, the completed portion of all main canals, distributing laterals, pipe lines and flumes situate wholly within the boundaries of said irrigation district, and the same appear upon the plat above referred to, including rights of way for the same.

Hereby reserving unto party of the first part the sole right to use and enjoy all waters stored in said reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the second part the exclusive right to use the water impounded in said reservoir including the water hereby conveyed to party of the second part for the purpose of developing power provided the same shall not thereby be diminished in quantity or quality.

It is covenanted and agreed that this conveyance, when all the work contemplated in that agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof shall contain particular and accurate descriptions including the courses and distances of rights of way for canals, and the canals, dams and other works, and a detail description of the reservoir site.

Warranty Deed, dated June 12, 1913, from Crane Creek Irrigation Land and Power Company and

Crane Creek Irrigation District. Consideration, \$5,-000.00. For the following described property:

An undivided twenty-two and four-tenths per cent. (22.4%) interest in and to the main canal of party of the first part between stations 150 and 350 according to the survey of Z. N. Vaughn as the same is now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all waters stored in said reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water hereby conveyed to party of the second part for the purpose of developing power provided the same shall not thereby be diminished in quantity or quality.

And hereby reserving unto party of the first part all portions of said works reserved to it in the contract dated August 22, 1910, as amended by the parties hereto.

It is covenanted and agreed that this conveyance, when all the work contemplated in that agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof shall have been fully completed and performed, which said final conveyance shall contain particular and accurate descriptions including the courses and distances of rights of way for canals, and the canals, dams and other works, and a detail description of the reservoir site.

Warranty Deed, dated this 1st day of September, 1913, from Crane Creek Irrigation Land & Power Company and Crane Creek Irrigation District. Consideration, \$23,000.00.

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 162+00 to 502+00 and 670+00 to 740+00, all according to the survey of Z. N. Vaughn, for said main canal as the same is now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also, reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22nd, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and

performed, shall be delivered up to the party of the first part for cancellation together with those two certain conveyances dated May 29th, 1913, and June 12th, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated November 1, 1913, between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration, \$16,623.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 93+00 to 502+00, 679+00 to 812+00, and the entire Smelter Lateral, all according to the survey of Z. N. Vaughn, for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those three certain conveyances dated May 29, 1913, June 12, 1913, and September 1, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be

executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated December 1, 1913, from Crane Creek Irrigation Land & Power Company and Crane Creek Irrigation District. Consideration, \$2,838.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 93+00 to 502+00, 679+00 to 812+00, and the entire Smelter Lateral, all according to the survey of Z. N. Vaughn, for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be

diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those four certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, and November 1, 1913, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works, and detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated January 2, 1914, between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration, \$5,235.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of Z. N. Vaughn, for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the

first part for cancellation together with those four certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, and December 1, 1913, heretofore given by party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyance shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated February 2, 1914, between Crane Creek Irrigation Land & Power Company and Crane Creek Irrigation District. Consideration, \$5,031.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of C. N. Vaughn for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the

so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including water carried by the portion of the main canal hereby conveyed to the party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those six certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, and January 2, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the right of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by the party of the first

part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated March 2, 1914, between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration, \$13,230.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of Z. N. Vaughn, for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of

said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation, together with those seven certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, and February 2, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the right of way for canals, and the canals, dams and other works, and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by the party of the first part, it being understood that the partial conveyance shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the work hereby conveyed.

Warranty Deed, dated April 1st, 1914, between Crane Creek Irrigation Land and Power Company

and Crane Creek Irrigation District. Consideration, \$32,655.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of Z. N. Vaughn for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation, together with those eight certain conveyances dated May 29, 1913, June 12,

1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, and March 2, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by the party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyances herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated May 1, 1914, between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration, \$26,675.00. For the following described property:

An undivided twenty-two and four-tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of Z. N. Vaughn for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the

so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir, including water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation, together with those nine certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, and April 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and de-

livered to the party of the second part by the party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, dated June 1st, 1914, from Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration \$15,700.00. For the following described property:

An undivided twenty-two and four tenths (22.4%) per cent. interest in and to the completed portion of the main canal, of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of Z. N. Vaughn for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving

unto the party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part, for cancellation, together with those ten certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, April 1, 1914, and May 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, Dated July 1, 1914, between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration, \$2,000.00. For the following described property.

An undivided twenty-two and four tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 46+00 to 502+00, 679+00 to 812+00, all according to the survey of Z. N. Vaughn, for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70,617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto the party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement made between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of

the first part, for cancellation, together with those eleven certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, April 1, 1914, May 1, 1914, June 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Warranty Deed, Dated August 15, 1914, between Crane Creek Irrigation Land and Power Company and Crane Creek Irrigation District. Consideration \$1.00. For the following described property.

An undivided twenty-two and four tenths (22.4%) per cent. interest in and to the completed portion of the main canal of the party of the first part between stations 37+00 to 502+00, 679+00 to 812+00, and the entire Smelter lateral and Weiser River siphon,

all according to the survey of Z. N. Vaughn, for said canals as the same are now staked upon the ground.

Hereby reserving unto party of the first part the sole right to use and enjoy all water stored in the so-called Crane Creek Reservoir in excess of seventy thousand six hundred seventeen (70617) acre feet; also reserving unto party of the first part the exclusive right to use the water impounded in said reservoir including the water carried by the portion of the main canal hereby conveyed to party of the second part for the purpose of developing power or electricity, provided the same shall not thereby be diminished or impaired in quality; and further reserving unto party of the first part all portions of said irrigation works reserved to it in the contract dated August 22, 1910, as supplemented and amended by the parties hereto.

It is further covenanted and agreed that this conveyance, when all the work contemplated in that certain agreement between the parties hereto, dated August 22, 1910, and the extensions and amendments thereof, shall have been fully completed and performed, shall be delivered up to the party of the first part for cancellation together with those twelve certain conveyances dated May 29, 1913, June 12, 1913, September 1, 1913, November 1, 1913, December 1, 1913, January 2, 1914, February 2, 1914, March 2, 1914, April 1, 1914, May 1, 1914, June 1, 1914, and July 1, 1914, heretofore given by the party of the first part to party of the second part, upon the execution and delivery of a final conveyance containing particular

and accurate descriptions, including courses and distances of the rights of way for canals, and the canals, dams and other works, and a detailed description of the reservoir site known as the Crane Creek Reservoir, shall be executed and delivered to the party of the second part by party of the first part, it being understood that the partial conveyances shall not be placed of record by party of the second part until the execution of the final conveyance herein. This conveyance being considered merely as a partial conveyance and incomplete except as to the completed portions of the works hereby conveyed.

Endorsed: Lodged July 8, 1915. Filed July 17, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,

Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, a corporation, et al.,

Defendants.

*Memorandum Decision on Claim of Plaintiff for Lien,
and Maney Brothers' Mortgage.*

May 17, 1915.

Richards & Haga, Attorneys for Plaintiff, defendant
Slick Bros. Construction Co., and Maney Bros.
& Co.

C. S. Varian and E. R. Coulter, Attorneys for Irrigation Districts.

B. S. Varian, Attorney for Crane Creek Irrigation Land & Power Co.

Dietrich, *District Judge*:

The suit was commenced by the Portland Wood Pipe Company, as plaintiff, to foreclose a mechanic's lien for material furnished to the defendant Slick Brothers Construction Company, for the construction of an irrigation system in Washington County, Idaho, against Slick Brothers Construction Company, a corporation, the Crane Creek Irrigation Land & Power Company, a corporation, Maney Brothers & Company, a corporation, and others, including the Crane Creek Irrigation District and Sunnyside Irrigation District, irrigation districts organized under the laws of Idaho, as defendants. Briefly stated, the facts out of which the controversy has grown are, that, in August, 1910, the defendant Crane Creek Irrigation Land & Power Company, reciting that it was the owner of certain water rights, a reservoir site, and rights of way for canals upon which certain construction work had been done, entered into separate contracts with the two defendant irrigation districts, under the terms of which it was to complete the construction of the reservoir and canals as called for by plans and specifications attached, and, with certain recervations, to make conveyance thereof in undivided interests to the two irrigation districts severally, for the permanent ownership and use by them for the irrigation of the lands which they em-

brace. In payment for the system when and as the same should be completed the districts agreed to turn over to the Power Company their several coupon bonds at their face value to the amount of the specified purchase price. In some of their features the contracts are unusual, and are probably to be accounted for by the fact that under the laws of the state, as they existed at the time of the execution of the contract, irrigation districts were authorized to dispose of their bonds only by a sale for cash to the highest bidder or by an exchange thereof at par for irrigation works; they could not use them in payment for construction work. Such is the view taken by the Supreme Court of California of a law of that state, of the same general purpose and scope.

Hughson v. Carne, 115 Cal. 404; 47 Pac. 120. The same court later held that it was competent for districts to enter into contracts for the purpose of systems to be constructed.

Stowell v. Rialto Irr. Dist., 155 Cal. 215; 100 Pac. 248. It is to be inferred that the contracts here were drawn to conform with the views expressed in these decisions.

The Power Company entered into a contract for construction work on the system with Maney Brothers & Company, and later with the Slick Brothers Construction Company for the completion of the system. It settled with Maney Brothers by the execution of a note for a large amount, secured by a mortgage upon the system, only a small part of which was then completed, and with Slick Brothers Construc-

tion Company by a written agreement, pursuant to which it was to deposit with a trustee certain bonds and securities, the proceeds of which were to be paid out to creditors in the manner therein provided. At the time this suit was commenced there was due to Maney Brothers, on account of the mortgage note, \$35,986.10, with interest thereon at the rate of six per cent from December 27, 1913. According to the contention of Slick Brothers Construction Company, there was also due to it a large balance, for which it had filed notice of a mechanic's lien, which it sought to foreclose in this suit. At the close of the trial I held that the Power Company had substantially complied with the agreement of settlement by placing the bonds and other securities in the hands of the trustee agreed upon, and therefore denied relief to Slick Brothers. Admittedly there is due to the plaintiff, the Portland Wood Pipe Company, \$10,317.44, which is the basis of the lien upon which the complaint is predicated.

The system was completed, and in accordance with the contract between the irrigation districts and the Power Company it was conveyed in separate shares to the districts, and at the time the suit commenced they were the owners of the legal title thereto. As already stated, there is no controversy as to the amount due from the Power Company to Maney Brothers, or from Slick Brothers Construction Company to the Portland Wood Pipe Company, but the irrigation districts contend that they held the property free from both the mortgage and the plaintiff's claim of lien.

First disposing of
THE LIEN CLAIM OF THE PORTLAND WOOD
PIPE CO.

Briefly stated, the districts' contention is that they are municipal corporations, that their property is dedicated to public uses, and that therefore it is exempt from the operation of the mechanic's lien laws of the state. It is argued that while Section 5110 of the Revised Codes in general terms confers the right of lien upon any person performing labor upon or furnishing materials to be used in the construction of any work, the section is not to be deemed to extend the right of lien to property belonging to the state or municipal corporations. Attention is called to Section 5111, which expressly provides for a lien in favor of sub-contractors, laborers, and persons furnishing material (but not original contractors), in case of structures belonging to "any county, city, town or school district," and to still another provision of the law by which contractors are required to furnish bonds to municipal corporations, including irrigation districts, to indemnify not only the corporation, but also any person furnishing labor or material, and the conclusion is drawn from the several provisions that the legislature did not intend to provide for a lien in favor of either a material man or a laborer in the case of structures or improvements belonging to an irrigation district. It would be strange for the legislature to extend the right of lien to buildings and other property belonging to a county, city, town, or school district, and withhold

it in the case of an irrigation district; and it is difficult to believe that such was the intention. But that question is not involved here. The material furnished by the plaintiff was for the construction of works belonging to the Power Company, not to the irrigation districts. It is true that the system was to be conveyed to the irrigation districts, but doubtless as they understood the law they could not contract to pay bonds for the construction of irrigation works, and they therefore intended that the construction should be for the Power Company, and that they would buy the completed structures. That being the case, they took title subject to such liens as incumbered the property when it came into the possession and ownership of the Power Company, and very clearly the Power Company acquired title to the property subject to the liens of the workmen who built it and the material men who furnished the material for its construction. *Creer v. Cache Valley Canal Co.*, 4 Idaho, 280; 38 Pac. 653. *Garland v. Irrigation Company*, 9 Utah, 350; 34 Pac. 368; 163 U. S. 687. *Fosdick v. Schall*, 99 U. S. 235. *Holt v. Henley*, 232 U. S. 637. The districts will not be permitted to take a position now inconsistent with that which they maintained that before the plaintiff furnished the pipe material it made inquiry and learned the nature of the contract between the Power Company and the irrigation districts, and was thus advised that the irrigation districts did not claim that they owned the property, or that the Power Company was merely a construction company.

There is no contention here that the districts required the Power Company to give a bond, which was their bounden duty to do if it was deemed to be a construction company. Undoubtedly the irrigation districts held out to the world that they were merely the purchasers of this property, and were not engaged in its construction. They cannot now be permitted to change their position, to the hurt of persons who in good faith dealt with the Power Company as the owner of the property.

I reject the suggestion that inasmuch as Slick Brothers Construction Company entered into the contract of settlement already referred to, with the Power Company, and thus waived its lien, the right of the plaintiff was thereby cut off. The statute confers upon the material man an independent right to a lien, of which he cannot be divested without his consent.

THE MANEY BROTHERS MORTGAGE.

We now come to a consideration of the validity and dignity of the Maney Brothers mortgage. There is no dispute that there remains due thereon a balance of \$35,986.10, besides interest from December 27, 1913, at the rate of six per cent per annum. The Power Company, mortgagor, makes no resistance, and the only defense is that interposed by the irrigation districts, which contend that under their contract of purchase and the subsequent deeds made in pursuance thereof, they took an unincumbered title to the property. As already stated, the contract of purchase was executed on August 22, 1910,

whereas the mortgage was not made until September 29, 1911; and the deeds were all executed at still later dates. Presumably a question having arisen as to the status of the mortgage lien, the mortgages on July 10, 1914, procured the passage of a resolution, at a joint meeting of the boards of directors of the two districts, expressing the view of the boards that the title received by the districts was subject to the mortgage, but there was appended an express disclaimer of any intention to waive any rights which the districts then possessed. It is scarcely necessary to observe that with this proviso the resolution did not even purport to enlarge the rights of the mortgagees. Later, namely, on August 18, 1914, the boards of directors, acting separately, passed a resolution ratifying a certificate executed by the president of each district, dated June, 1914, certifying to certain undisputed facts touching the history of the transaction and purporting to concede that the mortgagees' rights were superior to those of the districts. But both the certificate and the subsequent ratification were without consideration, and even were it to be assumed that an irrigation district may be estopped by the unauthorized acts of its officers, there were wanting here some of the essential elements of estoppel. I am therefore clearly of the opinion that both the resolutions and the certificates must be laid aside as having no efficacy whatsoever.

There remains the general question whether the transfer consummated by the deeds delivered from

time to time as portions of the system were completed, relates back to the date of the contract and cuts off the intervening mortgage lien. It is conceded that for certain purposes at least this doctrine of relation is to be recognized, but it is not to be given effect here, it is argued, because it would work an injustice and it is never invoked where such would be the result. The supposed injustice lies in the fact that if the mortgage is defeated the mortgagor may be unable to recover all of the mortgage debt. The gist of the contention seems to be that in case of an executory contract for the sale of real property the vendor retains the power to transfer the legal title to a third person or subject it to a lien, and in such cases the transferee or mortgagee is subrogated to the rights of the vendor, and is entitled to receive the unpaid portion of the purchase price. Specifically it is urged that the mortgage lien here attached to the unpaid purchase price, and that the districts having notice, both constructive and actual, of the existence of the mortgage, paid the Power Company at their peril. But the application of the principle to the facts in hand is not so plain or simple. The contract in question was for the purchase of an indivisible unit of property. No substantial part of it was in existence at the time the contract was made; it was largely to be created before it could be transferred. Admittedly, when completed it was to be conveyed free from all incumbrances. What then were the rights and duties of the districts? Clearly it was their right to take such course as was reason-

ably necessary to secure the performance of the contract, and, as already stated, one of the provisions of the contract was that they should receive title to the completed system free from incumbrances, of which condition mortgagees at all times had knowledge. Now what in fact did they do? So far as the record shows, they paid the purchase price by turning their bonds over to the Power Company to be used by it in procuring the construction of and title to the property conveyed by the contract, and the bonds were so used. In view of the record, it is idle to talk about withholding the purchase price and applying it to the discharge of the mortgage indebtedness. Had such a policy been suggested at the outset, the contractors would doubtless have declined to proceed with the work, and if it had been adopted after the work was done, mechanic's liens would have been asserted against the property. That the lien of those who, by supplying labor and material, created the property, was superior to the equity of the districts, I have already held, and that it was superior to the mortgage lien is scarcely open to controversy. Under such circumstances, it was the right of the districts to see that the purchase price was applied to the discharge of the superior liens; those of contractors, laborers, and of material men. If we assume that thereafter it was their duty to withhold from the vendor and pay to the mortgagee the balance, it need only be said that there is no showing that there was any balance. So far as appears none of the bonds constituting the purchase price

has been turned over to or retained by the Power Company for its own profit.

It is now quite immaterial that the mortgage indebtedness originated in construction work done by the mortgagees upon a branch of this irrigation system. If we assume that up to the time they took the mortgage their right to a mechanic's lien remained unimpaired, they abandoned that right by taking the mortgage. It may very well be true that if they had then insisted upon such a lien the project would have fallen through and they would have been left with worthless security. But however that may be, and whatever may have been their motives, they waived their statutory lien and took the mortgage, and their status here is that of a mortgagee and nothing more.

There is this further consideration: The districts, as we have seen, were under no obligation to pay the Power Company money; the price was to be paid in bonds. If the mortgagees were resting upon the theory that as holders of a mortgage they were in a sense subrogated to the right of the Power Company to receive the purchase price, why did they not demand that a part of the purchase price be turned over to them? They apparently knew that the bonds were being delivered, and yet made no demand or protest. Great difficulty was experienced in negotiating the bonds even at heavy discounts. From the record can we say that the mortgagees would have been willing to take them at their face value or for that matter at any price? Upon their own

theory, their mortgage at most conferred upon them a conditional right to receive a part of the unpaid purchase price. But the purchase price consisted not of money but of bonds, and at no time during the entire transaction did they intimate a willingness to accept bonds, nor up to the present time have they manifested such willingness. They are insisting upon the payment of their claim in money. As against their debtor, the Power Company, such is their right, but in view of the law, upon any state of facts either real or assumed, was it ever the duty of the districts to pay them any part of their demand in money. In view of these considerations it is thought that the lien of the mortgage does not extend to such property rights and interests as were covered by the contract and have been conveyed to the districts pursuant to the terms thereof. A foreclosure will therefore be granted only as to the other property described in the mortgage, including the interest reserved by the Power Company in the irrigation system.

As to attorneys' fees, possibly the amount testified to, namely, \$1,000.00, would not be excessive for the Portland Wood Pipe Company, if counsel who represent it were not otherwise employed in the case, but taking into consideration the fact that the same counsel also represent the mortgagees and Slick Brothers, I am inclined to think \$750.00 will be an adequate allowance on this account. As to Maney Brothers, their principal controversy, namely, that their lien extends to the property of the Irrigation Dis-

tricts, is found to be without valid basis, and insofar as the legal services pertain to that controversy, they must themselves bear the expense. For other services they are entitled to recover, and \$1,000.00 will be awarded on account thereof.

My conclusion as to the Slick Brothers claim was announced orally. As to the Comerford claim, after a ruling upon the controlling questions, I am advised of a complete settlement between the interested parties. Both the cross-complaint and the counter-claim will therefore be dismissed as settled.

Counsel for the plaintiff will draught form of decree and submit the same to other counsel in the case.

Endorsed: Filed May 17, 1915. A. L. Richardson, Clerk.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
tion,

Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW

WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L. CHENOWETH, and GEO. C. CATER,

Defendants,

AND

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation,

Cross-Complainant

VS.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, et al.,

Cross-Defendants,

AND

MANEY BROTHERS & CO., (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells),

Cross-Complainant,

VS.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, UTAH FIRE CLAY COMPANY, a corpor-

ation, PORTLAND WOOD PIPE COMPANY, a corporation, SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L. CHENOWETH, GEO. C. CATER, E. D. FORD, A. G. BUTTERFIELD, and R. C. McKINNEY,

Cross-Defendants.

DECREE.

In Equity. No. 511.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed, as follows, viz:

1. That the defendants, Idaho National Bank, a corporation, C. R. Shaw Wholesale Company, a corporation, Utah Fire Clay Company, a corporation, Pete March, G. A. Heman, J. M. Pinckard, F. A. Squier, Jim Mirehouse, Guy Comerford, Wm. R. Comerford, James M. Magee, C. A. Smith, J. L. Smith, George F. Smith, Claude F. Smith, A. T. Schwab, A. L. Chenoweth and George C. Cater have no interest, lien, claim, or demand on or against the irrigation works, water rights, canals, structures, lands and premises hereinafter described, or any part thereof; and plaintiff's said Bill and the several Cross-Bills filed herein are dismissed as to H. H

Begley, Henry Whitmore, L. F. Easton, J. C. Toney, Thomas Sherry and E. H. Hasbrouck, originally made parties defendant in this cause.

2. That the defendant and cross-complainant, S. C. Comerford, take nothing by his cross-complaint herein, and the cross-bill of said S. C. Comerford is hereby dismissed.

3. That said Portland Wood Pipe Company do have and recover from the defendant Slick Brothers Construction Company, Limited, the sum of \$9,733.-94 with interest thereon at the rate of eight per cent. (8%) per annum from the 24th day of June, 1914 and the sum of \$6.60 for recording mechanic's lien filed by said plaintiff and described in its bill of complaint, and the further sum of \$750.00, attorney's fee, making in the aggregate the sum of \$11,244.30, together with its costs of suit, taxed at \$137.60.

4. That the said plaintiff, Portland Wood Pipe Company, is entitled to and has a first charge and lien for the security and payment of the above sums of money upon all the right, title, and interest of the defendants Sunnyside Irrigation District and Crane Creek Irrigation District in and to the following described property:

(a) That certain reservoir and reservoir site situated in Township Twelve (12) North, Range Two (2) West, B. M., Washington County, Idaho, application for right of way for which was filed in the United States Land Office at Boise, Idaho, by one E. D. Ford on the 3rd day of September, 1907, and which said application was approved by Thomas Ry-

an, Acting Secretary of the Interior, on the 26th day of October, 1907; and which said reservoir and reservoir site is more particularly described in said application and on the duplicate map filed in connection with said application and kept on file in the United States Land Office at Boise, Idaho, and the dam for which said reservoir is situated in the Southeast Quarter (S. E. $\frac{1}{4}$) of the Southeast Quarter (S. E. $\frac{1}{4}$), Section Nineteen (19) of said Township and Range; and all lands situated within said reservoir site, including the right of way secured as aforesaid from the government of the United States.

(b) All canals, ditches, headgates, flumes, pipe lines, laterals, and other structures, dams and works used, or intended to be used, or required in connection with the distribution of the water from said reservoir and carrying and distributing said water to the place or places of intended use; and all rights of way therefor, and particularly that certain canal on the southerly side of Crane Creek and crossing the west boundary line of the Crane Creek Irrigation District near the center of Section 7, Township 11 North, Range 3 West, Washington County, Idaho, and extending thence in a southerly direction through Sections 7, 18, 19 and 30, and into Section 31 of said township and range; thence in a northerly and easterly direction through said Sections 31 and 30 and into and through Sections 25 and 36 in Township 11 North, Range 4 West; thence in a southerly and westerly direction through Sections 1, 2, 11, 10, 15, 16, 21, 28, 20, 29, 17, 19, and 18 in Township 10

North, Range 4 West, B. M., and thence in a southerly and westerly direction through Sections 13 and 24 to a point near what is known as Buttermilk Slough in the Northeast Quarter (N. E. $\frac{1}{4}$) of Section 23, Township 10 North, Range 5 West, B. M.; and also that certain siphon and branch canal branching off or extending from the main canal, hereinbefore described, in the Northwest Quarter (N. W. $\frac{1}{4}$) of the Northwest Quarter (N. W. $\frac{1}{4}$) of Section 36, Township 10 North, Range 4 West, B. M., and extending across Weiser River in a northwesterly direction through Sections 35, 26, 23, and 22, and in a southerly and westerly direction through Sections 27, 28 and 32, Township 11 North, Range 4 West, B. M.; and all branch canals, main and subordinate laterals, service ditches, pipe lines, headgates, and other structures of every kind and nature used, or intended to be used, in connection with said irrigation system, or any part thereof, being the identical irrigation system constructed by the Crane Creek Irrigation Land & Power Company under its contract with the defendants Sunnyside Irrigation District and Crane Creek Irrigation District, and in which system and irrigation works said Crane Creek Irrigation Land & Power Company has conveyed, subject to plaintiff's said lien, an undivided 22.4% interest to said Crane Creek Irrigation District, together with all of what is known as the Smelter Lateral and the Weiser River Siphon; and in which said system and irrigation works said Crane Creek Irrigation Land & Power Company has conveyed to the defendant Sunnyside Irrigation District, subject

to plaintiff's said lien, an undivided 47.2% interest, and all of what is known as the High Line Lateral Sunnyside Ditch, and also what is known as the Low Line Lateral as built both easterly and westerly from what is known as the Cove Creek Siphon.

(c) Also all water rights and rights to the use of water in connection with the reservoir and irrigation system, works and structures, hereinbefore described, acquired by said defendants, Sunnyside Irrigation District and said Crane Creek Irrigation District, under their several contracts with the defendant Crane Creek Irrigation Land & Power Company, and particularly the interest of said districts in the following permits issued by the State Engineer of the State of Idaho to the said Crane Creek Irrigation Land & Power Company, said permits being issued on the dates, and numbered and recorded in the office of the State Engineer of the State of Idaho, as follows, to-wit:

Permit No. 1720, recorded Book 6, page 1720, issued Dec. 9, 1905.

Permit No. 6830, recorded Book 20, page 6830, issued Aug. 16, 1910.

Permit No. 6832, recorded Book 20, page 6832, issued Sep. 3, 1910.

Permit No. 6833, recorded Book 20, page 6833, issued Sep. 30, 1910.

Permit No. 6834, recorded Book 20, page 6834, issued Oct. 20, 1910.

Permit No. 8507, recorded Book 27, page 8507, issued Aug. 10, 1912.

5. That the said plaintiff Portland Wood Pipe Company is entitled to and has a charge and lien for the security and payment of the above sums of money upon all the right, title, and interest of the Crane Creek Irrigation Land & Power Company in and to the reservoir, canals, water rights, irrigation system, works and structures above described, which said lien or charge is subject only to the lien of the mortgage of Maney Brothers & Company, hereinafter referred to; and that the interest of said Crane Creek Irrigation Land & Power Company upon which plaintiff is adjudged and decreed a second lien or charge, subject as aforesaid to the mortgage of Maney Brothers & Company, is an undivided 30.4% in said canals, irrigation works, water rights, structures, and reservoir, to a reservoir capacity of 70,-617 acre feet, and all of the reservoir capacity in excess of 70,617 acre feet and all right to the use of the water impounded in said reservoir for the development of power, being all the interest in said irrigation system, reservoirs, canals and water rights not conveyed by said Crane Creek Irrigation Land & Power Company to the said irrigation districts, and the interest so conveyed being as aforesaid an undivided 22.4% to said Crane Creek Irrigation District and an undivided 47.2% to said Sunnyside Irrigation District, with the reservation in said Crane Creek Irrigation Land & Power Company of all water stored in said reservoir in excess of 70,617 acre feet.

6. That the mechanic's lien of the said plaintiff Portland Wood Pipe Company is prior and superior

to any of the claims or liens of the defendants in this cause, except as to the interest of said Crane Creek Irrigation Land & Power Company in said irrigation system, reservoir and water rights, as to which interest the mechanic's lien of said Portland Wood Pipe Company is subject and subordinate to the mortgage of Maney Brothers & Company hereinafter referred to.

It is further ordered, adjudged and decreed, that the defendant Slick Brothers Construction Company, Limited, shall within thirty days after the entry of this decree pay, or cause to be paid, to said Portland Wood Pipe Company, or to the Clerk of this Court for the use and benefit of said plaintiff, the sums of money hereinbefore mentioned, together with interest thereon from the date of entry of this decree to the date of such payment at the rate of seven per cent. (7%) per annum, and that unless said payment be made by said defendant Slick Brothers Construction Company, Limited, or by any of the other defendants in this cause, or by any one in their behalf, within the time and in the manner herein described, all the property hereinbefore described may be sold as hereinafter directed to satisfy said claim of plaintiff; and that under and by said sale all equity of redemption, except as hereinafter provided, of the defendants, and each and every of them, and of any and all persons claiming by, through, or under said defendants, or either of them, except the lien or claim of said Maney Brothers & Company in and to the said property, lands, rights, and franchises, be fore-

closed and cut off and forever barred, and that said property be sold as an entirety and in one parcel without valuation or appraisement, but subject to the prior lien of the mortgage of Maney Brothers & Company against the interest of said Crane Creek Irrigation Land & Power Company in said property, at public auction to the highest bidder or bidders at the Court House in Weiser, Washington County, State of Idaho, on a day or days to be fixed by the Special Master of this Court, and public notice of such sale and the time and place thereof, together with the manner and terms upon which said sale is to be conducted, shall be given by such Special Master in the manner following, to-wit:

Said Special Master shall give notice of such sale by advertisement in a newspaper published at Weiser, Washington County, Idaho, once a week for at least four weeks next prior to such sale, and said notice shall, among other things, briefly describe in general terms the property and irrigation works to be sold, making reference to this decree for a full description thereof; and such Special Master shall have the power to adjourn said sale from time to time to a future date by oral announcement made at any time before the sale, or at the time noticed for such sale, by consent of the solicitors for plaintiff, or either of them, or the approval of the Judge of this Court, without prejudice to the notice or notices of sale and without necessity of publishing any further notice; but the Special Master may nevertheless give such notice of his action by publication or by

posting at the front door of said Court House, or otherwise, as he may deem fit.

That any party to this action may become a bidder or purchaser at said sale. That said sale shall be for cash, ten per cent. (10%) to be payable at the time of said sale, and the balance to be paid at the time of the confirmation by this Court of said sale.

That if the plaintiff Portland Wood Pipe Company shall bid in said property, then and in that event said bidder shall be entitled to have its judgment, or so much thereof as may be necessary, credited upon such bid instead of paying cash, paying, however, a sufficient sum in cash to satisfy and discharge all expenses of said sale.

That said Special Master shall make full report of his proceedings hereunder, and such supplemental reports from time to time as may be necessary and desirable to show fully his action in the premises: and upon said Special Master filing his report of sale, the purchaser or any party to this suit may move for confirmation thereof, and a time shall be set for the hearing of said motion and such objections as may be made to said confirmation; and if the sale be not confirmed a re-sale shall be ordered as authorized by law; and upon any such re-sale the same proceedings shall be had as upon the original sale, save and except that no further notice thereof need be given than a brief notice of the time and place of re-sale referring to the notices first published for the terms and conditions thereof, and for a

description of the property, which notice shall be published for such duration as the court in its order for re-sale may direct.

It is further ordered, adjudged and decreed, that upon payment of the purchase price by the purchaser or purchasers of said property, that said Special Master shall execute and deliver a deed conveying the property purchased to said purchaser or purchasers, or his or their successors or assigns, and upon the execution and delivery of such deed and the expiration of the period of redemption as hereinafter fixed, the grantee under said deed shall be let into the possession of the premises conveyed, and shall be entitled to hold and enjoy and possess said premises and property and all the rights, privileges, immunities and franchises thereto appertaining, free and clear of any lien or liens of any of the defendants herein, except the lien of the mortgage of Maney Brothers & Company as to the interest of said Crane Creek Irrigation Land & Power Company in said reservoir, water rights, canals, and irrigation works.

It is further ordered, adjudged and decreed, that in case the proceeds of said sale shall prove to be insufficient to provide for the payment in full of the sums hereinbefore mentioned and described, then such Special Master shall find and report to this Court the amount of such deficiency or deficiencies, and such report being confirmed by this Court, plaintiff shall be entitled to judgment therefor against the defendant Slick Brothers Construction Company,

Limited, and to have execution issued thereon pursuant to the rules and practice of this Court.

It is further ordered, adjudged and decreed, that W. C. Dunbar, Esq., of Boise, Idaho, be, and he is hereby, appointed Special Master to execute this decree and make the said sale, and to execute and deliver the deeds of conveyance of the property sold to the purchaser or purchasers thereof. As soon as any sale shall have been made by the said Special Master, in pursuance of this decree, he shall report the same to this Court for confirmation, and shall from time to time thereafter make such further supplemental reports as shall be necessary to keep the Court and the parties to this suit properly advised of his proceedings in the execution of this decree.

It is further ordered, adjudged and decreed, that the defendant Crane Creek Irrigation Land & Power Company, hereinafter sometimes called the Crane Creek Company, duly made, executed and delivered to said Maney Brothers & Company the note and mortgage described in said cross-complainant's cross-bill, and that such note was duly endorsed by the defendants E. D. Ford, A. G. Butterfield and R. C. McKinney, and that said E. D. Ford, A. G. Butterfield and R. C. McKinney are liable for the payment of the full amount due said cross-complainant.

And it is further ordered, adjudged and decreed, relative to the claim of said Maney Brothers & Company as follows, viz:

1. That said Maney Brothers & Company do have and recover from the defendant Crane Creek Irriga-

tion Land & Power Company, E. D. Ford, A. G. Butterfield, and R. C. McKinney, and each of them, the sum of \$35,986.10, with interest thereon at the rate of six per cent. (6%) per annum from the 27th day of December, 1913, and the sum of \$1,000.00 as attorney's fee for the foreclosure of said mortgage, making in the aggregate the sum of \$40,140.00, and costs and disbursements herein, taxed at \$65.60.

2. That the payment of the aforesaid sums is secured by the said mortgage from said Crane Creek Company to said cross-complainant, described in the cross-complaint and bearing date the 29th day of September, 1911, which said mortgage is a first charge and lien upon all the right, title and interest of the defendant Crane Creek Irrigation Land & Power Company in the lands and premises, reservoir, canals, irrigation works, structures and water rights hereinbefore described; and that the interest of said Crane Creek Irrigation Land & Power Company, subject to the conditions hereinafter contained, in said irrigation system is an undivided 30.4% in said canals, irrigation works, water rights, structures, and reservoir (excepting those certain canals and laterals hereinbefore adjudged as having been entirely conveyed to the Crane Creek Irrigation District or the Sunnyside Irrigation District), until the capacity of the reservoir amounts to 70,617 acre feet; and said Crane Creek Company is the owner, subject to said mortgage, of all reservoir capacity in said reservoir in excess of 70,617 acre feet, and of all right to the use of the water impounded in said reservoir for the development of power.

3. That the mortgage of said cross-complainant is prior and superior to any of the claims or liens of the said defendants in this cause as against the right, title and interest, and the whole thereof, of said Crane Creek Company in and to the said reservoir, canals, water rights, irrigation system, works, and structures; but the interest in said irrigation works, reservoir, water rights, canals and structures conveyed by said Crane Creek Company to the Sunnyside Irrigation District, to-wit: An undivided 47.2% and the interest conveyed by said Crane Creek Company in said property, irrigation works, water rights, reservoir, canals and structures to the Crane Creek Irrigation District, to-wit: An undivided 22.4% interest, are free and clear of the lien of said mortgage, and said cross-complainant Maney Brothers & Company has no lien, claim, or demand whatsoever on or against the interests of said Crane Creek Irrigation District and of said Sunnyside Irrigation District in and to the said reservoir, irrigation works, water rights, canals and structures.

4. That the said mortgage of the cross-complainant Maney Brothers & Company, is also a first charge and lien for the security of the payment of the sums of money so due cross-complainant, as aforesaid, as against any right, title and interest of the defendants herein in and to the following described lands and premises:

S. E. $\frac{1}{4}$ of Sec. 5.

E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$, and the S. W. $\frac{1}{4}$ of the
S. E. $\frac{1}{4}$ of Sec. 10.

N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 15.

E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 10.

N. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 17.

E. $\frac{1}{2}$ of the N. W. $\frac{1}{4}$ of Sec. 17.

S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 8.

S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$, and the E. $\frac{1}{2}$ of the
S. W. $\frac{1}{4}$ of Sec. 11.

N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 14.

N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$, and the N. $\frac{1}{2}$ of
the N. W. $\frac{1}{4}$ and the S. W. $\frac{1}{4}$ of the N.
W. $\frac{1}{4}$ of Sec. 12.

Lot No. 4, and the S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of
Sec. 7.

All in Township Ten (10) North, Range Four
(4) West, B. M.

S. W. $\frac{1}{4}$ of Sec. 27.

N. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$, and the S. E. $\frac{1}{4}$ of the
N. E. $\frac{1}{4}$, and the N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$
of Sec. 13.

All in Township Eleven (11) North, Range
Four (4) West, B. M.

E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 12, Township Ten
(10) North, Range Five (5) West, B. M.

N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 9.

N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 9.

S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 9.

S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 7.

N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 8.

N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 8.

N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 9.

S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 10.

N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 10.

All in Township Ten (10) North, Range Four
(4) West, B. M.

N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 33.

S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 33.

N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 33.

N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 33.

S. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 33.

S. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 33.

N. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 33.

N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 33.

All in Township Eleven (11) North, Range
Four (4) West, B. M.

S. E. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 2, Township
Ten (10) North, Range Five (5) West,
B. M.

N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 10.

S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 10.

S. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 10.

N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 10.

N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 10.

S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 10.

S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 10.

N. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 11.

N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 13.

N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 13.

N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 14.

N. E. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 15.

N. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 15.

S. W. $\frac{1}{4}$ of the N. E. $\frac{1}{4}$ of Sec. 15.

All in Township Eleven (11) North, Range
Six (6) West, B. M.

S. W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of Sec. 36.

S. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 36.

S. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 36.

N. E. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 36.

N. W. $\frac{1}{4}$ of the S. E. $\frac{1}{4}$ of Sec. 36.

All in Township Eleven (11) North, Range
Five (5) West, B. M.

5. That the defendants Crane Creek Irrigation Land & Power Company, E. D. Ford, A. G. Butterfield, and R. C. McKinney shall within thirty days after the entry of this decree pay, or cause to be paid, to said cross-complainant Maney Brothers & Company, or to the Clerk of this Court for the use and benefit of said cross-complainant, the sums of money hereinbefore mentioned, to-wit: The sum of \$40,140.00, together with costs and disbursements herein, and interest thereon from date of entry of this decree to the date of such payment at the rate of seven per cent (7%) per annum; and if such payment be not made by said defendants or by any one for them, within the time and in the manner herein described, all the property hereinbefore described and upon which the mortgage of said cross-complainant has herein been adjudged and decreed a lien may be sold as herein directed to satisfy said claim of the said cross-complainant; and that under and by said sale all equity of redemption, except as hereinafter provided, of said defendants and each and every of

them, and of any and all persons claiming by, through, or under said defendants, or either of them, in the said lands and premises, reservoir, canals, irrigation system, works, structures, and water rights, be foreclosed, cut off and forever barred, and that said property be sold as an entirety and in one parcel, without valuation or appraisement, at public auction, to the highest bidder or bidders, at the Court House in Weiser, Washington County, State of Idaho, on a day or days to be fixed by the said Special Master of this Court, and public notice of such sale and the time and place thereof, together with the manner and the terms upon which said sale is to be conducted, shall be given by such Special Master in the manner hereinbefore directed relative to the sale under the claim and lien of the plaintiff Portland Wood Pipe Company, and the directions and provisions of this decree relative to such sale and the confirmation thereof and the execution of deeds and other necessary conveyances to the purchaser shall be observed, so far as applicable, in the sale that may be had to satisfy the claim of said Maney Brothers & Company. That any party to this action may become a bidder or purchaser at such sale; and if the cross-complainant Maney Brothers & Company, or any one for them or in their behalf, shall bid in said property, then and in that event such bidder shall be entitled to have the judgment in favor of said Maney Brothers & Company, or so much thereof as may be necessary, credited upon such bid instead of paying cash, paying, however, a sufficient sum in cash to satisfy and discharge all expenses of such sale.

That upon the payment of the purchase price by the purchaser or purchasers of said property, lands, premises, reservoir, water rights, canals, works, structures, and irrigation system such Special Master shall execute and deliver a deed conveying the property purchased to such purchaser or purchasers, or his or their successors or assigns; and upon the execution and delivery of such deed, and the expiration of the period of redemption as hereinafter fixed, the grantee thereunder shall be let into possession of the premises and property conveyed, and shall be entitled to hold, enjoy and possess said premises and property, and all the rights and privileges, immunities and franchises thereunto appertaining, free and clear of any lien or liens of any of the defendants herein.

7. That in case the proceeds of said sale shall prove to be insufficient to provide for the payment in full of the sums hereinbefore mentioned and described, then such Special Master shall find and report to this Court the amount of such deficiency or deficiencies, and, such report being confirmed by this Court, the cross-complainant Maney Brothers & Company shall be entitled to judgment therefor against the defendants Crane Creek Irrigation Land & Power Company, E. D. Ford, A. G. Butterfield, and R. C. McKinney, and to have execution issued thereon pursuant to the rules and practice of this Court.

8. That the provisions of the contracts, dated August 22, 1910, between Crane Creek Irrigation Land & Power Company and the said Crane Creek Irriga-

tion District and Sunnyside Irrigation District, to the effect that in the event said Crane Creek Irrigation Land & Power Company shall not increase the storage capacity of said reservoir to 70,617 acre feet within five years from the delivery and acceptance of the proportion of said irrigation system which said contracts provide shall be delivered and conveyed to said districts, respectively, and that, in such event, said company shall convey to said districts certain additional percentage of interest, insofar as the same are still in force and effect and have not been modified or changed by supplemental contracts or agreements between said parties, shall be binding upon the purchaser or purchasers, their grantees, successors, or assigns, under any sale or sales had in satisfaction of the lien or claim of said Maney Brothers & Company; and the purchaser or purchasers under said sale shall take only such interest in said reservoir, canals, water rights and irrigation system as said Crane Creek Irrigation Land & Power Company may have or be entitled to hold and retain under existing contracts between said Crane Creek Company and said districts, entered into prior to the filing of the cross-bill of said Maney Brothers & Company.

It is further ordered, adjudged and decreed, that the enforcement by the plaintiff Portland Wood Pipe Company of the terms of this decree relating to its claim shall be without prejudice to the right of the cross-complainant Maney Brothers & Company hereunder; and likewise the enforcement of the terms

and provisions of this decree relative to the rights and claim of said Maney Brothers & Company shall be without prejudice to the rights of said Portland Wood Pipe Company; and said parties may separately and severally proceed hereunder for the enforcement of their respective rights and claims.

It is further ordered, adjudged and decreed, that all property, lands, premises, water rights, irrigation works, canals, and structures and interests therein that may be sold under the provisions of this decree, whether in satisfaction of the claim of the Portland Wood Pipe Company or the claim of said Maney Brothers & Company, shall be subject to redemption by qualified redemptioners under the laws of the State of Idaho within three months from the date of confirmation of such sale, which redemption period is so fixed at three months upon the express agreement of the parties hereto interested in said decree, that the same is a reasonable and proper period for redemption, in view of the nature and character of the property to be sold and the circumstances of the parties; that such redemption shall be made by payment of the amount required for redemption, computed according to the practice of this court. Further provisions relative to such redemption may be made in the order of confirmation of sale.

It is further ordered, adjudged and decreed, that Slick Brothers Construction Company, Limited, one of the cross-complainants herein, take nothing by the cross-bill, and said cross-bill is hereby dismissed; and

the defendants to said cross-bill shall be entitled to judgment against said Slick Brothers Construction Company, Limited, for their costs incurred in connection therewith, to be taxed as provided by statute and the rules of Court.

Any party may apply for further directions at the foot of this decree.

Dated June 12, 1915.

F. S. DIETRICH,
District Judge.

Endorsed: Filed June 12, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD,

WM. R. COMERFORD, JAMES M. MAGEE,
C. A. SMITH, J. L. SMITH, GEO. F. SMITH,
CLAUDE F. SMITH, A. T. SCHWAB, A. L.
CHENOWETH, and GEO. C. CATER,

Defendants,

AND

SLICK BROTHERS CONSTRUCTION COM-
PANY, Limited, a corporation,

Cross-Complainant,

VS.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, et al.,

Cross-Defendants,

AND

MANEY BROTHERS & CO., (a co-partnership con-
sisting of J. W. Maney, John Maney, Herbert G.
Wells and E. J. Wells),

Cross-Complainant,

VS.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, CRANE CREEK IR-
RIGATION DISTRICT, a corporation, SUNNY-
SIDE IRRIGATION DISTRICT, a corporation,
IDAHO NATIONAL BANK, a corporation, C. R.
SHAW WHOLESALE COMPANY, a corporation,
UTAH FIRE CLAY COMPANY, a corporation,
PORTLAND WOOD PIPE COMPANY, a corpor-
ation, SLICK BROTHERS CONSTRUCTION
COMPANY, Limited, a corporation, PETE
MARCH, G. A. HEMAN, J. M. PINCKARD, F.
A. SQUIER, S. C. COMERFORD, JIM MIRE-
HOUSE, GUY COMERFORD, WM. R. COMER-

FORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L. CHENOWETH, GEO. C. CATER, E. D. FORD, A. G. BUTTERFIELD, and R. C. McKINNEY,

Cross-Defendants.

In Equity. No. 511.

ASSIGNMENT OF ERRORS.

The defendant, Crane Creek Irrigation District, above named, files the following assignment of errors upon which it will rely upon its prosecution of its appeal from the decree made by this Honorable Court on the 12th day of June, A. D. 1915, in the above entitled cause:

I.

The United States District Court for the District of Idaho, Southern Division, erred in ordering, adjudging and decreeing that the plaintiff, Portland Wood Pipe Company, is entitled to and has a first charge and lien for the security and payment of the sums of money adjudged to be due plaintiff from the defendant, Slick Brothers Construction Company, to-wit, \$9733.94, with interest thereon at 8 per cent. per annum from June 24, A. D. 1914, recording and attorneys fees aggregating in the sum of \$11,244.30, with costs, upon all the right, title and interest of this defendant, Crane Creek Irrigation District in and to the property in said decree particularly described as constituting the irrigation system constructed by the defendant Crane Creek Irrigation Land & Power Company for this defendant, and the

defendant, Sunnyside Irrigation District, and all the water rights, permits, rights-of-way, and appropriations connected with and necessary to the use of said system. For a particular description of said system and property, reference is hereby made to said decree.

II.

The said Court erred in ordering, adjudging and decreeing that the said plaintiff, the Portland Wood Pipe Company was entitled to and had a mechanic's lien under the laws of the State of Idaho, which was a charge and lien upon the interest of this defendant in the irrigation system constructed by the Crane Creek Irrigation Land & Power Company for this defendant, and the defendant Sunnyside Irrigation District, and all the water rights, permits, rights-of-way and appropriations connected with and necessary to the use of said system. For a particular description of said system and property reference is hereby made to said decree.

III.

The said Court erred in deciding and adjudging as matter of law that material-men furnishing supplies and material for the construction of an irrigation system for the use and benefit of irrigation districts, such as this defendant, were entitled to liens as security for the value of such material, against the irrigation system, and it erred in deciding and adjudging that the laws of the State of Idaho granted or permitted the charging of such property with mechanics' or material men's liens.

IV.

The said Court erred in ordering, adjudging and decreeing that the said irrigation system and property be sold as an entirety and in one parcel; and in ordering, adjudging and decreeing that the said property was subject to execution or foreclosure sale.

V.

The said Court erred in adjudging and decreeing that the entire system, including its water rights, permits, rights-of-way and appropriations connected with and necessary to its use should be sold in one parcel, without valuation, or appraisement, and without provision for the application of the proceeds of the sale of the interest of the Crane Creek Irrigation Land & Power Company in the system and property, if any there should be after satisfaction of the Maney Brothers mortgage lien, being first applied in satisfaction of plaintiff's claim before resort should be had to the interests of this defendant.

VI.

The Court erred in not dismissing plaintiff's bill of complaint as against this defendant, and its interest and property right in the irrigation system hereinbefore in the pleadings and decree mentioned.

Wherefore, this defendant, Crane Creek Irrigation District, prays that the said judgment and decree of the District Court of the United States for the District of Idaho, Southern Division, be reversed, with directions to dismiss the bill of complaint of the

Portland Wood Pipe Company as against this defendant, and for costs.

C. S. VARIAN,
ED. R. COULTER,

Solicitors for Defendant, Crane Creek Irrigation District.

Endorsed: Filed July 8, 1915. A. L. Richardson, Clerk.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH,

CLAUDE F. SMITH, A. T. SCHWAB, A. L.
CHENOWETH, and GEO. C. CATER,

Defendants,

AND

SLICK BROTHERS CONSTRUCTION COM-
PANY, Limited, a corporation,

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, et al.,

Cross-Defendants,

AND

MANEY BROTHERS & CO., (a co-partnership con-
sisting of J. W. Maney, John Maney, Herbert G.
Wells and E. J. Wells),

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, CRANE CREEK
IRRIGATION DISTRICT, a corporation, SUN-
NYSIDE IRRIGATION DISTRICT, a corpora-
tion, IDAHO NATIONAL BANK, a corporation,
C. R. SHAW WHOLESALE COMPANY, a cor-
poration, UTAH FIRE CLAY COMPANY, a cor-
poration, PORTLAND WOOD PIPE COMPANY,
a corporation, SLICK BROTHERS CONSTRUC-
TION COMPANY, Limited, a corporation,
PETE MARCH, G. A. HEMAN, J. M. PINCK-
ARD, F. A. SQUIER, S. C. COMERFORD, JIM
MIREHOUSE, GUY COMERFORD, WM. R.
COMERFORD, JAMES M. MAGEE, C. A.

SMITH, J. L. SMITH, GEO. F. SMITH,
CLAUDE F. SMITH, A. T. SCHWAB, A. L.
CHENOWETH, GEO. C. CATER, E. D. FORD,
A. G. BUTTERFIELD, and R. C. McKINNEY,
Cross-Defendants.

In Equity. No. 511.

ASSIGNMENT OF ERRORS.

The defendant, Sunnyside Irrigation District, above named, files the following assignment of errors upon which it will rely upon its prosecution of its appeal from the decree made by this Honorable Court on the 12th day of June, A. D. 1915, in the above entitled cause:

I.

The United States District Court for the District of Idaho, Southern Division, erred in ordering, adjudging and decreeing that the plaintiff, Portland Wood Pipe Company, is entitled to and has a first charge and lien for the security and payment of the sums of money adjudged to be due plaintiff from the defendant, Slick Brothers Construction Company, to-wit, \$9733.94, with interest thereon at 8 per cent. per annum from June 24, 1914, recording and attorneys' fees aggregating in the sum of \$11,244.30, with costs, upon all the right, title and interest of this defendant Sunnyside Irrigation District, in and to the property in said decree particularly described as constituting the irrigation system constructed by the defendant, Crane Creek Irrigation Land & Power Company, for this defendant, and the defend-

ant, Crane Creek Irrigation District, and all the water rights, permits, rights-of-way and appropriations connected with and necessary to the use of said system. For a particular description of said system and property reference is hereby made to said decree.

II.

The said Court erred in ordering, adjudging and decreeing that the said plaintiff, Portland Wood Pipe Company, was entitled to and had a mechanic's lien under the laws of the State of Idaho, which was a first charge and lien upon the interest of this defendant in the irrigation system constructed by the Crane Creek Irrigation Land & Power Company for this defendant and the defendant, Crane Creek Irrigation District, and all the water rights, permits, rights-of-way, and appropriations connected with and necessary to the use of said system. For a particular description of said system and property reference is hereby made to said decree.

III.

The said Court erred in deciding and adjudging as matter of law that material-men furnishing supplies and material for the construction of an irrigation system for the use and benefit of irrigation districts, such as this defendant, were entitled to liens as security for the value of such material against the irrigation system, and it erred in deciding and adjudging that the laws of the State of Idaho granted or permitted the charging of such property with mechanic's or material-men's liens.

IV.

The said Court erred in ordering, adjudging and decreeing that the said irrigation system and property be sold as an entirety and in one parcel; and in ordering, adjudging and decreeing that the said property was subject to execution or foreclosure sale.

V.

The Court erred in adjudging and decreeing that the entire system, including its water-rights, permits, rights-of-way and appropriations connected with and necessary to its use should be sold in one parcel without valuation and without provision for the application of the proceedings of the sale of the interest of the Crane Creek Irrigation Land & Power Company in the system and property, if any there should be, after satisfaction of the Maney Brothers mortgage lien, being first applied in satisfaction of plaintiff's claim before resort should be had to the interests of this defendant.

VI.

The Court erred in not dismissing plaintiff's bill of complaint as against this defendant and its interest and property right in the irrigation system hereinbefore in the pleadings and decree mentioned.

Wherefore, this defendant, Sunnyside Irrigation District, prays that the said judgment and decree of the District Court of the United States for the District of Idaho, Southern Division, be reversed, with directions to dismiss the bill of complaint of the

Wood Pipe Company as against this defendant, and for costs.

C. S. VARIAN,
ED. R. COULTER,

Solicitors for Defendant Sunnyside Irrigation District.

Endorsed: Filed July 8, 1915. A. L. Richardson, Clerk.

JOURNAL ENTRY.

At a stated term of the District Court of the United States for the District of Idaho, held at Boise, Idaho, on Thursday, the 8th day of July, 1915.

Present: Hon. Frank S. Dietrich, Judge.
PORTLAND WOOD PIPE COMPANY,

vs.

SLICK BROS. CONSTRUCTION COMPANY, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, et al.

No. 511.

Now comes the defendants, the Crane Creek Irrigation District and the Sunnyside Irrigation District by their solicitors and in open court severally present their petitions for an allowance of an appeal from the decree of this court made and filed in this cause on the 12th day of June, 1915, to the Circuit Court of Appeals for the Ninth Circuit, and for fix-

ing of the amount of a bond in each case to act as a supersedeas, and it appearing that said petitions are in form and that each of the said defendants has presented and filed its assignment of errors, it is ordered that appeals in each case be and the same is hereby allowed, and the bond in each case is fixed in the sum of \$3000.00 to act as a supersedeas.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L. CHENOWETH, and GEO. C. CATER,

Defendants,

AND

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation,

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, et al.,

Cross-Defendants,

AND

MANEY BROTHERS & CO., (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells),

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, UTAH FIRE CLAY COMPANY, a corporation, PORTLAND WOOD PIPE COMPANY, a corporation, SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation. PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L.

CHENOWETH, GEO. C. CATER, E. D. FORD,
A. G. BUTTERFIELD, and R. C. McKINNEY,
Cross-Defendants.

In Equity. No. 511.

PETITION FOR ALLOWANCE OF APPEAL
WITH SUPERSEDEAS.

The above named defendant, Crane Creek Irrigation District, a corporation, conceiving itself aggrieved by the decree made and entered in the above entitled cause on the 12th day of June, A. D. 1915, whereby it was ordered, adjudged and decreed that the defendant, Portland Wood Pipe Company, a corporation, plaintiff herein, was entitled to and had a first lien for the security and payment to it of the sum of \$9733.94, with interest thereon at the rate of 8 per cent. per annum from June 24, 1914, with the recording fees and attorneys fees aggregating in the sum of \$11,244.30 upon all the right, title and interest of this defendant, Crane Creek Irrigation District, in and to the property in said decree particularly described, and constituting the irrigation system constructed by the Crane Creek Irrigation Land & Power Company, for this defendant, and the defendant, Sunnyside Irrigation District, and all the water rights, permits, rights-of-way, appropriations connected with and necessary to the use of said system, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons particularly set forth in its assignments of errors which is filed herewith; and defendant prays that said appeal may be allowed, and

that an order be made fixing the amount of security which it shall give for costs and as a supersedeas, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal, and that a transcript of the record, papers and proceedings upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

C. S. VARIAN,

ED. R. COULTER,

Solicitors for Defendant Crane Creek Irrigation
District.

ORDER ALLOWING APPEAL.

On motion of E. R. Coulter and C. S. Varian, Esqs., solicitors for defendant, Crane Creek Irrigation District, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that the bond on appeal be fixed at the sum of \$3000.00, the same to act as a supersedeas and also as a bond for costs and damages on appeal.

FRANK S. DIETRICH,

District Judge.

Done in open Court this 8th day of July, A. D.
1915.

Endorsed: Filed July 8, 1915. A. L. Richardson, Clerk.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, MANEY BROTHERS & COMPANY, a co-partnership, UTAH FIRE CLAY COMPANY, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L. CHENOWETH, and GEO. C. CATER,

Defendants,

AND

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation,

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, et al.,

Cross-Defendants.

AND

MANEY BROTHERS & CO., (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells),

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, CRANE CREEK
IRRIGATION DISTRICT, a corporation, SUN-
NYSIDE IRRIGATION DISTRICT, a corpora-
tion, IDAHO NATIONAL BANK, a corporation,
C. R. SHAW WHOLESALE COMPANY, a cor-
poration, UTAH FIRE CLAY COMPANY, a cor-
poration, PORTLAND WOOD PIPE COMPANY,
a corporation, SLICK BROTHERS CONSTRUC-
TION COMPANY, Limited, a corporation,
PETE MARCH, G. A. HEMAN, J. M. PINCK-
ARD, F. A. SQUIER, S. C. COMERFORD, JIM
MIREHOUSE, GUY COMERFORD, WM. R.
COMERFORD, JAMES M. MAGEE, C. A.
SMITH, J. L. SMITH, GEO. F. SMITH,
CLAUDE F. SMITH, A. T. SCHWAB, A. L.
CHENOWETH, GEO. C. CATER, E. D. FORD,
A. G. BUTTERFIELD, and R. C. McKINNEY,

Cross-Defendants.

In Equity. No. 511.

PETITION FOR ALLOWANCE OF APPEAL
WITH SUPERSEDEAS.

The above named defendant, Sunnyside Irrigation

District, a corporation, conceiving itself aggrieved by the decree made and entered in the above entitled cause on the 12th day of June, A. D. 1915, whereby it was ordered, adjudged and decreed that the defendant, Portland Wood Pipe Company, a corporation, plaintiff herein, was entitled to and had a first lien for the security and payment to it of the sum of \$9733.94, with interest thereon at the rate of 8 per cent. per annum from June 24, 1914, with recording fees and attorneys fees aggregating in the sum of \$11,244.30, and costs of suit, upon all the right, title and interest of this defendant, Sunnyside Irrigation District, in and to the property in said decree particularly described, and constituting the irrigation system constructed by the Crane Creek Irrigation Land & Power Company, for this defendant, and the defendant, Crane Creek Irrigation District, and all the water rights, permits, rights-of-way, appropriations connected with and necessary to the use of said system, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons particularly set forth in its assignments of error which is filed herewith; and the defendant prays that said appeal may be allowed, and that an order be made fixing the amount of security which it shall give for costs and as a supersedeas, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said appeal, and that a transcript of the record, papers and proceedings upon which said decree was

made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

C. S. VARIAN,
ED. R. COULTER,

Solicitors for Defendant Sunnyside Irrigation
District.

ORDER ALLOWING APPEAL.

On motion of E. R. Coulter and C. S. Varian, Esqs., solicitors for defendant, Sunnyside Irrigation District, it is ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree herein be, and the same is, hereby allowed, and that a certified transcript of the record, testimony, exhibits and proceedings herein be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit. It is further ordered that the bond on appeal be fixed at the sum of \$3000.00, the same to act as a superseas and also as a bond for costs and damages on appeal.

FRANK S. DIETRICH,
District Judge.

Done in open court this 8th day of July, A. D. 1915.

Endorsed: Filed July 8, 1915. A. L. Richardson, Clerk.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a corpora-
tion, *Plaintiff,*

vs.

SLICK BROTHERS CONSTRUCTION COM-
PANY, Limited, a corporation, CRANE CREEK
IRRIGATION LAND & POWER COMPANY, a
corporation, CRANE CREEK IRRIGATION
DISTRICT, a corporation, SUNNYSIDE IRRI-
GATION DISTRICT, a corporation, IDAHO NA-
TIONAL BANK, a corporation, C. R. SHAW
WHOLESALE COMPANY, a corporation, MA-
NEY BROTHERS & COMPANY, a co-partner-
ship, UTAH FIRE CLAY COMPANY, a corpo-
ration, PETE MARCH, G. A. HEMAN, J. M.
PINCKARD, F. A. SQUIER, S. C. COMER-
FORD, JIM MIREHOUSE, GUY COMERFORD,
WM. R. COMERFORD, JAMES M. MAGEE,
C. A. SMITH, J. L. SMITH, GEO. F. SMITH,
CLAUDE F. SMITH, A. T. SCHWAB, A. L.
CHENOWETH, and GEO. C. CATER,

Defendants,

AND

SLICK BROTHERS CONSTRUCTION COM-
PANY, Limited, a corporation,

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER
COMPANY, a corporation, et al.,

Cross-Defendants,

AND

MANEY BROTHERS & CO., (a co-partnership consisting of J. W. Maney, John Maney, Herbert G. Wells and E. J. Wells),

Cross-Complainant,

vs.

CRANE CREEK IRRIGATION LAND & POWER COMPANY, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, IDAHO NATIONAL BANK, a corporation, C. R. SHAW WHOLESALE COMPANY, a corporation, UTAH FIRE CLAY COMPANY, a corporation, PORTLAND WOOD PIPE COMPANY, a corporation, SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, PETE MARCH, G. A. HEMAN, J. M. PINCKARD, F. A. SQUIER, S. C. COMERFORD, JIM MIREHOUSE, GUY COMERFORD, WM. R. COMERFORD, JAMES M. MAGEE, C. A. SMITH, J. L. SMITH, GEO. F. SMITH, CLAUDE F. SMITH, A. T. SCHWAB, A. L. CHENOWETH, GEO. C. CATER, E. D. FORD, A. G. BUTTERFIELD, and R. C. McKINNEY,

Cross-Defendants.

In Equity. No. 511.

PRAECIPE FOR RECORD.

The Clerk of the above entitled District Court is hereby directed to transcribe for the joint record on appeal herein by Crane Creek Irrigation District, a corporation, and Sunnyside Irrigation Dis-

trict, a corporation, the following pleadings, exhibits, and parts thereof, opinion of the Court, final decree and statement of the evidence, and transcribing only the portions of the exhibits hereinafter mentioned as hereinafter stated.

1. Bill of Complaint.

2. Answer thereto of Crane Creek Irrigation District.

3. Answer thereto of the Sunnyside Irrigation District.

4. Contract of August 22, 1910, of the Crane Creek Irrigation Land & Power Company and Sunnyside Irrigation District Exhibit "B".

5. Contract of date October 3, 1911, extending time to May 1, 1912, Exhibit "M".

6. Contract between the same parties of date April 19, 1913, extending time to April 15, 1914, Exhibit "O".

7. Contract of date April 19, 1913, providing for joint surety bond to both districts, Exhibit "T".

8. Contract of date of August 22, 1910, between the Crane Creek Irrigation Land & Power Company and Sunnyside Irrigation District, Exhibit "C".

9. Contracts between the Crane Creek Irrigation Land & Power Company and Slick Brothers Construction Company, Limited, Slick Bros. Exhibits 37, 38 and 39, omitting the specifications of such contracts annexed thereto.

10. Contract between Slick Brothers Construction Company, Limited, and Portland Wood Pipe Company, Plaintiff's Exhibit 1-A and 1-B.

11. Deeds from the Crane Creek Irrigation Land & Power Company to the Crane Creek Irrigation District numbered 1 to 13 inclusive, and deeds from the Crane Creek Irrigation Land & Power Company to the Sunnyside Irrigation District numbered 1 to 13 inclusive, with the date of each deed except the second and third paragraphs thereof embracing the granting clause and the description of the property conveyed.

12. Statement of the evidence of the witnesses E. D. Ford and E. R. Coulter.

13. Opinion of the Court.

14. The final decree.

15. Petition for appeal and order in pursuance thereof.

16. Order made in open court allowing appeals.

17. Assignment of errors by Crane Creek Irrigation District.

18. Assignment of errors by Sunnyside Irrigation District.

19. Bond of Crane Creek Irrigation District on appeal.

20. Bond of Sunnyside Irrigation District on appeal.

Respectfully,

C. S. VARIAN,

E. R. COULTER,

Solicitors for Defendants Crane Creek Irrigation District and Sunnyside Irrigation District.

Dated this 8th day of July, A. D. 1915.

Service with copy admitted this 8th day of July,
A. D. 1915.

RICHARDS & HAGA,
Solicitors for Plaintiff.

Endorsed: Filed July 8, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

BOND OF CRANE CREEK IRRIGATION
DISTRICT.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

PORTLAND WOOD PIPE COMPANY, a Corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a Corporation, CRANE CREEK IRRIGATION DISTRICT, a Corporation, SUNNYSIDE IRRIGATION DISTRICT, a Corporation, et al.,
Defendants.

IN EQUITY, No. 511.

UNDERTAKING ON APPEAL.

Know All Men by These Presents, That we, Crane Creek Irrigation District, a corporation, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto the Portland Wood Pipe Company, a corporation, in the sum of Three Thousand (\$3000.00) Dollars, lawful money of the United States of America, to be paid to the aforesaid Portland Wood Pipe Company, a

corporation, its successors or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, our, and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of July, A. D. 1915.

Whereas, the above named Crane Creek Irrigation District, a corporation, defendant above named, obtained in open court an order allowing its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree in favor of the above named Portland Wood Pipe Company, a corporation, against the said defendant, rendered in said District Court on the 12th day of June, A. D. 1915, to reverse the said decree, and to stay the execution thereof pending the said appeal; and,

Whereas, the said United States District Court has fixed the sum of a bond on said appeal as security for all costs and damages, and to act as a supersedeas in the sum of Three Thousand Dollars (\$3000.00);

Now, Therefore, the condition of this obligation is such that if the said Crane Creek Irrigation District shall prosecute its said appeal to effect and shall answer all damages and costs that may be awarded against it, including all just damages for delay and costs and interest on said appeal, if it fails to make its said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

In Witness Whereof, the parties aforesaid have caused their corporate names to be hereunto subscribed, and their corporate seals attached, by the proper officers in that behalf duly authorized.

(Seal) CRANE CREEK IRRIGATION DISTRICT,
Principal,
By Wm. Themel, President.

(Seal) AMERICAN SURETY COMPANY OF
NEW YORK,
By W. E. McKell, Resident Vice President.

Attest: Frances Merrill,
Resident Assistant Secretary.

B. S. Varian, Resident Agent American Surety
Co. of New York.

Attest: Daisy Dasch, Secretary.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety, this 7th day of August, A. D. 1915.

FRANK S. DIETRICH,
District Judge.

STATUTORY AFFIDAVIT FOR CORPORATE
SURETY, IDAHO.

State of Utah,
County of Salt Lake,—ss.

On the 29th day of July, 1915, personally appeared before me, a Notary Public in and for the county and State aforesaid, W. E. McKell, to me known to be a Resident Vice President of the American Surety Company of New York, who, being by me duly sworn,

did depose and say: That he resided in the City of Salt Lake City, State of Utah; that he is Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of trustees of said corporation; and that he signed his name thereto by like order; that said corporation has complied with Chapter Eleven of the Idaho Revised Codes and all other laws of the State of Idaho relating to surety companies and has also complied with the Act of Congress approved August Thirteenth, A. D. 1894, entitled: "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon," as amended March 23, 1910; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law; and the said W. E. McKell further said that he was acquainted with Frances Merrill and knew him to be one of the Resident Assistant Secretaries of said corporation; that the signature of said Frances Merrill subscribed to the said instrument is in the genuine handwriting of the said Frances Merrill and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him, the said W. E. McKell, Resident Vice President; Affiant further says that the Insurance Commissioner of the State of Idaho, whose address is Boise, Idaho, has been appointed attorney

upon whom process for the State of Idaho may be served according to law.

W. E. McKELL.

Subscribed and sworn to before me this 29th day of July, 1915.

(Seal) CORA BEATTY, Notary Public.

Endorsed: Filed August 16, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

BOND OF SUNNYSIDE IRRIGATION
DISTRICT.

In the District Court of the United States for the District of Idaho, Southern Division.

PORTLAND WOOD PIPE COMPANY, a corporation,
Plaintiff,

vs.

SLICK BROTHERS CONSTRUCTION COMPANY, Limited, a corporation, CRANE CREEK IRRIGATION DISTRICT, a corporation, SUNNYSIDE IRRIGATION DISTRICT, a corporation, et als.,
Defendants.

IN EQUITY. No. 511.

Undertaking on Appeal.

Know All Men by These Presents, That we, Sunnyside Irrigation District, a corporation, as principal, and American Surety Company of New York, as surety, are held and firmly bound unto the Portland Wood Pipe Company, a corporation, in the sum of Three Thousand (\$3000.00) Dollars, lawful money of the United States of America, to be paid to

the aforesaid Portland Wood Pipe Company, a corporation, its successors or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, our, and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29th day of July, A. D. 1915.

Whereas, The above named Sunnyside Irrigation District, a corporation, defendant above named, obtained in open court an order allowing its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from a decree in favor of the above named Portland Wood Pipe Company, a corporation, against the said defendant, rendered in said District Court on the 12th day of June, A. D. 1915, to reverse the said decree, and to stay the execution thereof pending in said appeal; and,

Whereas, The said United States District Court has fixed the sum of a bond on said appeal as security for all costs and damages, and to act as a supersedeas in the sum of Three Thousand (\$3000.00) Dollars,

Now Therefore, The condition of this obligation is such that if the said Sunnyside Irrigation District shall prosecute its said appeal to effect and shall answer all damages and costs that may be awarded against it, including all just damages for delay and costs and interest on said appeal, if it fails to make its said appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

In Witness Whereof, The parties aforesaid have caused their corporate names to be hereunto subscribed, and their corporate seals attached, by the proper officers in that behalf duly authorized.

(Seal) SUNNYSIDE IRRIGATION DISTRICT,
Principal.

Attest: By August Brockman, President.
E. R. Coulter, Secretary.

(Seal) AMERICAN SURETY COMPANY OF
NEW YORK,

By W. E. McKELL,
Resident Vice President.

Attest: Frances Merrill,
Resident Assistant Secretary.

B. S. Varian, Resident Agent American Surety
Co., N. Y.

The foregoing bond is hereby approved as to form, amount and sufficiency of surety this 7th day of August, A. D. 1915.

FRANK S. DIETRICH,
District Judge.

STATUTORY AFFIDAVIT FOR CORPORATE
SURETY, IDAHO.

State of Utah,
County of Salt Lake,—ss.

On the 29th day of July, 1915, personally appeared before me, a Notary Public in and for the county and state aforesaid, W. E. McKell to me known to be a Resident Vice President of the American Surety

Company of New York, who being by me duly sworn did depose and say: That he resided in the City of Salt Lake City, State of Utah; that he is Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation; and that he signed his name thereto by like order; that said corporation has complied with Chapter Eleven of the Idaho Revised Codes and all other laws of the State of Idaho relating to surety companies and has also complied with the Act of Congress approved August Thirteenth, A. D. 1894, entitled: "An act relative to recognizances, stipulations, bonds and undertakings, and to allow certain corporations to be accepted as surety thereon," as amended March 23, 1910; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law; and the said W. E. McKell further said that he was acquainted with Frances Merrill and knew him to be one of the Resident Assistant Secretaries of said corporation; that the signature of said Frances Merrill subscribed to the said instrument is in the genuine handwriting of the said Frances Merrill and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him, the said W. E. McKell, Resident Vice President; affiant further says that the Insurance Commissioner of the State of

Idaho, whose address is Boise, Idaho, has been appointed Attorney upon whom process for the State of Idaho may be served according to law.

W. E. McKELL.

Subscribed and sworn to before me this 29th day of July, 1915.

(Seal) CORA BEATTY, Notary Public.

Endorsed: Filed August 16, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

RETURN TO RECORD.

And thereupon it is ordered by the Court, that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and the same is transmitted accordingly.

Attest: (Seal) A. L. RICHARDSON,
Clerk.

By PEARL E. ZANGER,
Deputy.

CRANE CREEK IRRIGATION DISTRICT, a corporation, and SUNNYSIDE IRRIGATION DISTRICT, a corporation,

Plaintiffs in Error,

vs.

PORTLAND WOOD PIPE COMPANY, a corporation, et al.,
Defendants in Error.

I, A. L. Richardson, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages from 1 to 249 inclusive contain true and correct copies of the Complaint, Answer of Crane Creek Irrigation District, Answer of Sunnyside Irrigation District, Statement of the Evidence with the Exhibits attached, Opinion of the Court, Final Decree, Petition for Appeal and Order in pursuance thereof, Order made in open Court allowing Appeal, Assignment of Errors by Crane Creek Irrigation District, Assignment of Errors by Sunnyside Irrigation District, Bond of Crane Creek Irrigation District, Bond of Sunnyside Irrigation District, Return to Record and Clerk's certificate, in the above entitled cause which, together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs of the record herein amounts to the sum of \$395.00 and that the same has been paid by the appellants.

Witness my hand and the seal of said court, affixed at Boise, Idaho, this 20th day of August, 1915.

(Seal) A. L. RICHARDSON,
Clerk.

By PEARL E. ZANGER,
Deputy.

